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Adopted by Chapter 1, Laws of 1979

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NOTICE

(Code Sections Affected)

The following sections were affected by the 1981 Legislature in Special Session:

15-16-101
15-16-102
15-17-303
39-51-2501 through 39-51-2506
39-51-2601
39-51-2602
39-51-3106
40-6-125
40-6-132 through 40-6-135
40-8-103
40-8-109
50-5-204
53-2-321
53-3-301
53-3-302
53-4-201
53-4-231
53-4-234 through 53-4-237

The text of those sections follows. We suggest you mark the affected sections in the appropriate volumes of the Code to remind yourself to consult this pamphlet when researching such sections.

15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the assessment book, the county treasurer must publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on November 30 next thereafter and that unless paid prior thereto the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on May 31 next thereafter and that unless paid prior to said date said taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) He must send to the last-known address of each taxpayer written notice, postage prepaid, showing the amount of taxes and assessments due the current year and the amount due and delinquent for other years. The written notice shall include:

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

(c) the value of each mill in that county;

(d) itemized city services and special improvement district assessments collected by the county;

(e) the number of the school district in which the property is located; and

(f) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(d) ready for mailing.

(4) The notice in every case must be published for 2 weeks in some weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. The failure to publish or post notices does not relieve the taxpayer from any of his liabilities. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax.

History: Ap. p. Sec. 3860, Pol. C. 1895; amd. Sec. 1, p. 97, L. 1899; re-en. Sec. 2616, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1917; re-en. Sec. 2169, R.C.M. 1921; Cal. Pol. C. Sec. 3746; amd. Sec. 2, Ch. 96, L. 1923; amd. Sec. 2, Ch. 67, L. 1931; re-en. Sec. 2169, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1977; Sec. 84-4101, R.C.M. 1947; Ap. p. Sec. 3861, Pol. C. 1895; re-en. Sec. 2617, Rev. C. 1907; re-en. Sec. 2170, R.C.M. 1921; Cal. Pol. C. Sec. 3749; re-en. Sec. 2170, R.C.M. 1935; Sec. 84-4105, R.C.M. 1947; R.C.M. 1947, 84-4101, 84-4105; amd. Sec. 1, Ch. 492, L. 1981; amd. Sec. 1, Ch. 576, L. 1981; amd. Sec. 1, Ch. 6, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Reduced the interest on delinquent taxes from 5/6 of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000 to a straight 5/6 of 1% per month rate on all delinquent taxes.

Effective Date and Applicability: Section 4, Ch. 6, Sp. L. 1981, provided: "This act is effective on passage and approval and applies to real and personal property taxes that become due on or after November 30, 1981, or that became due prior to November 30, 1981, and remain unpaid on or after November 30, 1981." Approved November 25, 1981.

15-16-102. Time for payment — penalty for delinquency. All taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, then such amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

History: En. Sec. 1, Ch. 96, L. 1923; amd. Sec. 1, Ch. 79, L. 1929; amd. Sec. 1, Ch. 67, L. 1931; amd. Sec. 4, Ch. 158, L. 1933; Sec. 1(a) amd. Sec. 1, Ch. 1, Ex. L. 1933; re-en. Sec. 2169.2, R.C.M. 1935; R.C.M. 1947, 84-4103; amd. Sec. 2, Ch. 165, L. 1979; amd. Sec. 4, Ch. 527, L. 1981; amd. Sec. 2, Ch. 576, L. 1981; amd. Sec. 2, Ch. 6, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Reduced the interest on delinquent taxes from 5/6 of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000 to a straight 5/6 of 1% per month rate on all delinquent taxes.

Effective Date and Applicability: Section 4, Ch. 6, Sp. L. 1981, provided: "This act is effective on passage and approval and applies to real and personal property taxes that become due on or after November 30, 1981, or that became due prior to November 30, 1981, and remain unpaid on or after November 30, 1981." Approved November 25, 1981.

15-17-303. Assignment of rights of county. (1) At any time after any parcel of land has been bid upon by the county as the purchaser thereof for taxes as provided in 15-17-207, the same not having been redeemed, the county treasurer shall assign all the right of the county therein acquired at such sale to any person who pays the amount for which the same was bid, with interest upon the original tax at the rate of 5/6 of 1% per month and the amount of all subsequent delinquent taxes, penalties, costs, and interest as provided by law upon the same from time to time when such tax became delinquent. The county treasurer shall execute to such person a certificate for such parcel, which may be substantially in the following form:

"I, ..., the treasurer of the county of ...., state of Montana, do hereby certify that at the sale of lands pursuant to the tax assessment for the year 19.. in the county of .... and which sale was held on the .... day of ...., 19.., for the purpose of liquidating assessment, the following described parcel of land, situate in the county of ...., state of Montana, to wit: (insert description) was duly offered for sale; that there was no purchaser in good faith for the same as provided by law and no person or purchaser offered to take the same and pay the taxes, cost, and charges due as aforesaid. Accordingly, the whole amount of the property assessed and described as above was struck off to the county of .... as purchaser thereof for the sum of ...., and the same still remaining unredeemed, and on this day .... having paid into the treasury of such county the amount for which the same was bid, together with all subsequent delinquent taxes, penalties, costs, and interest amounting in all to .... dollars.

Now, therefore, in consideration thereof and pursuant to the statute in such case made and provided, I do hereby assign and set over all the right, title, and interest of the county of ...., state of Montana, acquired in such lands under and by virtue of the sale to ...., his heirs and assigns forever, together with all the rights, powers, and privileges of the county of .... to take steps to receive a deed thereof or receive payment in case of a redemption; subject, however, to redemption as provided by law.

Witness my hand and official seal of office this .... day of ...., 19...

.... (County Treasurer)"

(2) If the certificate described in subsection (1) becomes lost by accident or destroyed by the assignee, the county treasurer shall issue a duplicate certificate to the assignee after the county treasurer is convinced that the certificate has been lost or destroyed and after the assignee has made an affidavit to that effect.

(3) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued by March 5, 1917, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at tax sale may now have.

(4) As to any land received by the county in exchange, the same may be sold or leased the same as might have been done with the lands exchanged.

History: (1), (2)En. Sec. 1, Ch. 151, L. 1917; re-en. Sec. 2207, R.C.M. 1921; re-en. Sec. 2207, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1937; amd. Sec. 1, Ch. 24, L. 1939; amd. Sec. 1, Ch. 11, L. 1947; Sec. 84-4138, R.C.M. 1947; (3)En. Sec. 2, Ch. 151, L. 1917; re-en. Sec. 2208, R.C.M. 1921; re-en. Sec. 2208, R.C.M. 1935; Sec. 84-4139, R.C.M. 1947; (4)En. Sec. 3, Ch. 65, L. 1933; re-en. Sec. 2208.3, R.C.M. 1935; Sec. 84-4141, R.C.M. 1947; R.C.M. 1947, 84-4138, 84-4139, 84-4141; amd. Sec. 10, Ch. 581, L. 1979; amd. Sec. 3, Ch. 576, L. 1981; amd. Sec. 3, Ch. 6, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Reduced the interest on delinquent taxes from 5/6 of 1% per month on the first $3,000 of delinquency and 1% per month on delinquent taxes in excess of $3,000 to a straight 5/6 of 1% per month rate on all delinquent taxes.

Effective Date and Applicability: Section 4, Ch. 6, Sp. L. 1981, provided: "This act is effective on passage and approval and applies to real and personal property taxes that become due on or after November 30, 1981, or that became due prior to November 30, 1981, and remain unpaid on or after November 30, 1981." Approved November 25, 1981.

39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Extended benefit period" means a period which:

(a) begins with the third week after a week for which there is a state "on" indicator, provided that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state; and

(b) ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period.

(2) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of his reports to the U.S. secretary of labor, by the average monthly employment covered under

this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(b) Computations required by the provisions of subsection (2)(a) shall be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(3) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(4) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this part for weeks of unemployment in his eligibility period.

(5) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(6) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85, in his current benefit year that includes such week; provided, that for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits;

(b) his benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code of 1954.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(1), (a)(6) thru (a)(11), (f)(2); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 9, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Deleted "whichever of the following weeks occurs first: (i) a week for which there is a national "on" indicator; or (ii)" after "third week after" at the beginning of (1)(a); deleted "either of the following weeks, whichever occurs later:" after "ends with" at the beginning of (1)(b); deleted "both a national "off" indicator and" before "a state "off" indicator" in (1)(b); inserted "for regular benefits" after "individuals filing claims" in (2)(a).

Effective Date: Section 6, Ch. 9, Sp. L. 1981, provided in part: "(1) Section 1 [39-51-2501] is effective on passage and approval." Approved November 30, 1981.

39-51-2502. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(2).

39-51-2503. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(3).

39-51-2504. State "on" indicator — when. There is a state "on" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) (a) the rate of insured unemployment equals or exceeds 5% for any such week and the immediately preceding 12 weeks; and

(b) the insured unemployment rate equals or exceeds 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; or

(2) if the rate of insured unemployment for such week is 5% or more but the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%, the insured unemployment rate for such week and the immediately preceding 12 weeks is 6% or more.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(4); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 9, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Deleted "for the period consisting of" following "labor, that" in the introductory clause; inserted "the rate of insured unemployment equals or exceeds 5% for any" at the beginning of (1)(a); deleted "the rate of insured unemployment (not seasonally adjusted) under this chapter" from the end of (1)(a); substituted "the insured unemployment rate equals or exceeds" for "equaled or exceeded" at the beginning of (1)(b); substituted "or" for "and" at the end of (1)(b); substituted present text of (2) for "equaled or exceeded 4%".

Effective Date: Section 6, Ch. 9, Sp. L. 1981, provided in part: "(2) Sections 2 and 3 [39-51-2504 and 39-51-2505] are effective on September 26, 1982."

39-51-2505. State "off" indicator — when. There is a state "off" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) for the period consisting of such week and the immediately preceding 12 weeks the rate of insured unemployment (not seasonally adjusted) under this chapter is less than 5%; or

(2) the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(5); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 3, Ch. 9, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Added "is less than 5%; or" to the end of (1); deleted "was less than 120% of" from the beginning of (2); added "is less than 120%" at the end of (2); deleted former subsection (2) that read: "was less than 4%".

Effective Date: Section 6, Ch. 9, Sp. L. 1981, provided in part: "(2) Sections 2 and 3 [39-51-2504 and 39-51-2505] are effective on September 26, 1982."

39-51-2506. Beginning and termination of extended benefit period — announcement of. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the department shall make an appropriate public announcement.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(f)(1); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 4, Ch. 9, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Deleted "(or in all states)" after "effective in this state" near the beginning of the section; deleted "or a national" before ""on" indicator"; deleted "and national" before ""off" indicators".

Effective Date: Chapter 9, Sp. L. 1981, did not provide an effective date for the amendments to this section. Therefore, under the provisions of 1-2-201, the amendments are effective October 1, 1982.

Title 39, Chapter 51, Part 26

Trade Readjustment

Part Compiler's Comments

1981 Special Session Title: The title to Ch. 7, Sp. L. 1981 (SB 1), read: "An act to authorize approved training when a claimant is eligible for trade readjustment benefits and to limit the number of weeks' duration of trade readjustment benefits if the claimant is eligible for extended benefits."

Codification Instruction: Section 3, Ch. 7, Sp. L. 1981, provided: "Sections 1 and 2 [39-51-2602 and 39-51-2601] are intended to be codified as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to sections 1 and 2."

Effective Date: Chapter 7, Sp. L. 1981, did not provide an effective date. Therefore, under the provisions of 1-2-201, sections 39-51-2601 and 39-51-2602 are effective October 1, 1982.

39-51-2601. Limitations on weeks of combined extended benefits and trade readjustment allowances. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would but for this section be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

History: En. Sec. 2, Ch. 7, Sp. L. 1981.

39-51-2602. Approved trade readjustment training. (1) Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week:

(a) because he is in training approved under Section 236(a)(1) of the federal Trade Act of 1974;

(b) in which he is in such approved training by reason of leaving work to enter such training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade Act of 1974.

History: En. Sec. 1, Ch. 7, Sp. L. 1981.

Parts 27 through 30 reserved

Title 39, Chapter 51, Part 31

Protections and Limitations on Rights and Benefits

39-51-3106. Child support interception of unemployment benefits. (1) For purposes of this section, the following definitions apply:

(a) "Unemployment compensation" means any compensation payable under the Montana unemployment insurance law, including amounts payable by the division pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(b) "Child support obligations" includes only obligations that are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act.

(c) "State or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan provided for in subsection (1)(b).

(2) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not he owes child support obligations. If an individual discloses that he owes child support obligations and the individual is determined to be eligible for unemployment compensation, the division shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

(3) The division shall deduct and withhold from any unemployment compensation payable to an individual owing child support obligations:

(a) the amount specified by the individual to the division to be deducted and withheld under this subsection if neither subsection (3)(b) nor (3)(c) is applicable;

(b) the amount, if any, determined pursuant to an agreement submitted to the division under Section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in Section 462(e) of the Social Security Act, properly served upon the division.

(4) The division shall pay any amount deducted and withheld under subsection (3) to the appropriate state or local child support enforcement agency.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the division under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

History: En. Sec. 1, Ch. 8, Sp. L. 1981.

Compiler's Comments

1981 Special Session Title: The title to Ch. 8, Sp. L. 1981 (SB 2), read: "An act to authorize the unemployment insurance division to inquire concerning child support, to notify the applicable child support enforcement agency and under certain circumstances to transmit a portion of the unemployment insurance benefits to the enforcement agency; and providing an immediate effective date."

Codification Instruction: Section 2, Ch. 8, Sp. L. 1981, provided: "Section 1 [39-51-3106] is intended to be codified an an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to section 1."

Effective Date: Section 3, Ch. 8, Sp. L. 1981, provided: "This act is effective on passage and approval." Approved November 30, 1981.

40-6-125. Children born out of wedlock — relinquishment — consent. (1) If the mother of a child born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a relinquishment terminating her rights to the child. If the mother relinquishes the child, the agency of the state of Montana or the licensed adoption agency to whom the child is relinquished may file a petition under this part or a petition of dependency or neglect pursuant to Title 41, chapter 3. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, her execution of a relinquishment shall be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated his rights under this part.

History: En. 61-329 by Sec. 2, Ch. 422, L. 1977; R.C.M. 1947, 61-329; amd. Sec. 4, Ch. 530, L. 1981; amd. Sec. 2, Ch. 1, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Substituted subsection (2) for "Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may deliver physical custody of her child to the department or a licensed child placing agency by filing a petition pursuant to 40-6-132. Upon petition, the court may enter an order authorizing temporary care of the child."; added subsection (3).

Effective Date: Section 7, Ch. 1, Sp. L. 1981, provided: "This act is effective on passage and approval." Approved November 25, 1981.

40-6-132. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 1, Ch. 530, L. 1981.

40-6-133. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 2, Ch. 530, L. 1981.

40-6-134. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 3, Ch. 530, L. 1981.

40-6-135. Relinquishment of parental rights — form, execution, and revocation. (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by executing a relinquishment by which all parental rights to the child are voluntarily relinquished to an agency of the state of Montana or a licensed adoption agency.

(2) Except as otherwise provided in this section, a relinquishment shall be by a separate instrument executed before a notary public.

(3) If the person from whom a relinquishment is required is a member of any of the armed services or is in prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer oaths.

(4) If the relinquishment is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that state or country and may not proceed unless it finds that the relinquishment was so executed.

(5) Upon the filing of a properly and voluntarily executed relinquishment of a child by a parent or guardian, the court shall immediately issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the agency of the state of Montana or the licensed adoption agency to which the relinquishment was given.

(6) Entry of an order terminating the rights of both parents pursuant to subsection (5) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(7) Upon petition of a person who executed a relinquishment and of the agency of the state of Montana or licensed adoption agency to which the child was relinquished, the court with which the relinquishment was filed

may grant a hearing to consider whether the relinquishment should be revoked. A relinquishment may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to the petition shall be made.

History: En. Sec. 1, Ch. 1, Sp. L. 1981.

Compiler's Comments

1981 Special Session Title: The title to Ch. 1, Sp. L. 1981 (HB 3), read: "An act to revise the laws relating to relinquishment of children for adoption; amending sections 40-6-125, 40-8-103, and 40-8-109, MCA; repealing sections 40-6-132 through 40-6-134, MCA; and providing an immediate effective date."

Codification Instruction: Section 6, Ch. 1, Sp. L. 1981, provided: "Section 1 [40-6-135] is intended to be codified as an integral part of Title 40, chapter 6, part 1, and the provisions of Title 40, chapter 6, part 1, apply to section 1."

Effective Date: Section 7, Ch. 1, Sp. L. 1981, provided: "This act is effective on passage and approval." Approved November 25, 1981.

40-8-103. Definitions. As used in this chapter, unless the context otherwise requires the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption.

(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

(7) "Department" means the department of social and rehabilitation services, as established and provided for in Title 2, chapter 15, part 22.

(8) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, brother or sister, niece or nephew, or first cousin.

(9) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(10) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

(11) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual pursuant to 40-6-135 or 40-8-109, whichever is applicable.

History: En. Sec. 1, Ch. 240, L. 1957; R.C.M. 1947, 61-201; amd. Sec. 6, Ch. 530, L. 1981; amd. Sec. 3, Ch. 1, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Substituted "40-6-135 or 40-8-109, whichever is applicable" for "40-6-132 through 40-6-134" at the end of (11); and made minor changes in phraseology.

Effective Date: Section 7, Ch. 1, Sp. L. 1981, provided: "This act is effective on passage and approval." Approved November 25, 1981.

40-8-109. Placement for adoption by parents. (1) No parent may make a placement of a child for adoption with an individual who is not a stepparent or a member of the child's extended family unless the parent files with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement; and

(b) a relinquishment of parental rights to the prospective adoptive parents executed voluntarily and in accordance with 40-6-135(2) through (4).

(2) The notice of parental placement and the relinquishment shall be filed prior to a parent's placement of the child with an individual who intends to adopt the child. The notice of parental placement shall contain the following information:

(a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(b) the name and address of each prospective adoptive parent;

(c) the name and address or expected date and place of birth of the child; and

(d) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties in (a) through (c) of subsection (2).

(3) Upon receipt of a notice of parental placement and a relinquishment, the court shall require that the department examine the child and conduct interviews with the birth parents and prospective adoptive parents and report to the court within 30 days but not earlier than 5 days after the birth of the child. The report must state whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents, the prospective adoptive parents, and their representatives have agreed in writing to provide the court with sworn affidavits containing itemized statements of all fees charged or to be charged, expenses incurred or to be incurred, and payments received or to be received in connection with the proposed adoptive placement;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; and

(e) that the proposed placement is in the child's best interest.

(4) Within 45 days of filing of the notice of parental placement and the relinquishment, the court shall schedule a hearing to consider the proposed placement.

(5) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the agency or person who conducted the investigation under subsection (3).

(b) The hearing shall be closed to all persons except those persons entitled to notice and their representatives or counsel.

(6) If the court finds that all requirements for placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents. The prospective adoptive parents must file their petition to adopt within 30 days of the order.

(7) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child.

History: **En. Sec. 11, Ch. 530, L. 1981; amd. Sec. 4, Ch. 1, Sp. L. 1981.**

Compiler's Comments

1981 Special Session Amendment: Substituted "an individual" for "a person" after "for adoption with" in (1); deleted "a notice of parental placement" after "the parent files" in (1); inserted subsections (1)(a) and (1)(b); inserted "and the relinquishment" after "parental placement" in (2), (3), and (4); substituted "an individual" for "a person" after "placement of the child with" in (2).

Effective Date: Section 7, Ch. 1, Sp. L. 1981, provided: "This act is effective on passage and approval." Approved November 25, 1981.

50-5-204. Issuance and renewal of licenses — inspections. (1) After receipt of a new or renewal application and a determination by the department that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for 1 year. If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community. The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

(2) The department must inspect a new facility before an initial license is granted.

(3) An application for renewal of a license must be accompanied by a report, on forms provided by the department, containing such information as the department considers necessary to determine whether minimum standards are being met.

(4) The department may inspect a licensed health care facility whenever it considers it necessary and shall inspect each licensed facility at least once within the 3 years following the date of its last inspection. The entire premises of a licensed facility shall be open to inspection, and access to all records shall be granted at all reasonable times.

History: **En. Sec. 164, Ch. 197, L. 1967; R.C.M. 1947, 69-5206; amd. Sec. 9, Ch. 347, L. 1979; amd. Sec. 1, Ch. 5, Sp. L. 1981.**

Compiler's Comments

1981 Special Session Amendment: Substituted the first sentence for "On receipt of a new or renewal application, the department or its authorized agent shall inspect the facility. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for 1 year."; added subsections (2), (3), and (4); combined former subsection (2) as the last sentence of (4); substituted "The entire premises of a licensed facility" for "Licensed premises" in the last sentence of (4).

Saving Clause: Section 2, Ch. 5, Sp. L. 1981, was a saving section.

Severability: Section 3, Ch. 5, Sp. L. 1981, was a severability section.

Effective Date: Section 6, Ch. 5, Sp. L. 1981, provided: "This act is effective on January 1, 1982."

53-2-321. *(Temporary)* **County authorized to care for indigent and levy taxes therefor.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law to provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this title, or the otherwise dependent poor of the county; erect and maintain hospitals therefor or otherwise provide for the same; and for said purposes to levy and collect annually a tax on property not exceeding 13 ½ mills, except as provided in section 2, Chapter 11, Special Laws 1981, that shall be made at the time other tax levies are made on property, as provided by law.

History: En. Subd. 5, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.4, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1941; amd. Sec. 1, Ch. 23, L. 1943; amd. Sec. 11, Ch. 212, L. 1965; amd. Sec. 1, Ch. 69, L. 1967; amd. Sec. 2, Ch. 279, L. 1974; R.C.M. 1947, 71-106; amd. Sec. 1, Ch. 11, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Inserted "except as provided in section 2, Chapter 11, Special Laws 1981" after "not exceeding 13 ½ mills"; made a minor change in grammar.

Matching State Grant: Section 2, Ch. 11, Sp. L. 1981, provided: "(1) A county may apply to the department for a matching grant-in-aid. The matching grant-in-aid is a state contribution of 50% of the county cost of providing assistance to the needy for all lawful poor fund purposes, except subsidy to a medical facility.

(2) The grant shall be awarded if the board of county commissioners or an executive officer of a county makes written application to the department certifying:

(a) that the county has budgeted for a mill levy in excess of 8 mills for the county poor fund;

(b) that the county has, or within a reasonable time will have, expended from the poor fund an amount raised by 8 mills;

(c) that such expenditures were reasonable and necessary, according to criteria set by the department in its rules adopted for such purposes, for the county to meet its obligations under law to provide assistance to the needy; and

(d) that the county participates in or operates a work program, as authorized by 53-3-304, that has been approved by the department.

(3) Upon determination that a county has met the conditions for a matching grant-in-aid, the state shall financially participate in 50% of all further lawful poor fund expenditures, except those for a medical facility subsidy, until such time that a county qualifies for an emergency grant-in-aid. The department may at its discretion advance funds to a county for the state's matching contribution for poor fund expenditures, or it may reimburse a county for such expenditures.

(4) (a) A county receiving a matching grant-in-aid may not levy more than ½ mill for each 1-mill expenditure equivalent over 8 mills for poor fund purposes except to subsidize a medical facility.

(b) For the purposes of 53-2-323, a county has exhausted all sources of revenue whenever its lawful poor fund expenditures (other than a subsidy for a medical facility) plus the state matching contribution has reached an amount equivalent to the revenues that could have been raised by the maximum mill levy authorized by 53-2-321.

(5) The department may adopt rules to implement this section."

1981 Special Session Title: The title to Ch. 11, Sp. L. 1981 (HB 13), read: "An act to provide that a county will receive a 50 percent state matching grant-in-aid if it has a work program after expending 8 mills of the 13.5 mill county poor fund for assistance to the needy; amending section 53-2-321, MCA; providing an effective date and termination date."

Statement of Intent: The statement of intent attached to HB 13 (Ch. 11, Sp. L. 1981) provided: "A statement of intent is necessary for this bill because section 2 [Ch. 11, Sp. L. 1981] grants rulemaking authority to the department of social and rehabilitation services.

The department is to make rules defining reasonable and necessary expenses of a county poor fund both for the purposes of expenditures prior to the time a county qualifies for a state matching grant-in-aid and for defining reasonable and necessary expenditures that the state shall participate in. The rules are expected to be guidelines that adequately forewarn counties as to the expenses that they can reasonably expect to be recognized by the state, yet not restrict a county's ability to locally operate its assistance program except insofar as a legitimate state interest is involved because of state financial participation.

The department may also adopt guidelines for state approval of work programs. It is preferred that the department will establish minimum and perhaps maximum standards allowing a county latitude in formulating a meaningful work program based upon its caseload and geographical location. The county plan adopted with these guidelines would then be subject to department approval.

Because of the uniqueness of this act the department may adopt rules governing the administration of the state matching grant-in-aid. Such matters as county reporting, methods of application, manner or actual funds advancement or reimbursement, and other matters which if properly addressed by rule will prevent repetitious ad-hoc decisions relating to different counties and, within the bounds of law, to provide simple and economical administration of the state matching grant-in-aid and to encourage county work programs.

The rules to implement this section shall be applicable only for the purposes of the state matching grant-in-aid. This act confers no rulemaking authority to the department to mandate eligibility, necessary expenses, work programs or other matters involving counties not otherwise eligible or not electing to receive state matching grants-in-aid. The rules promulgated to administer this act may, where applicable, be coordinated with rules for emergency grants-in-aid.

Adopted by the House Local Government Committee, November 20, 1981."

Effective Date: Section 3, Ch. 11, Sp. L. 1981, provided: "This act is effective July 1, 1982."

Termination Date: Section 4, Ch. 11, Sp. L. 1981, provided: "This act shall terminate on June 30, 1983."

53-2-323. Emergency grants from state funds to counties. A county may apply to the department for an emergency grant-in-aid, and the grant shall be made to the county upon the following conditions:

(1) The board of county commissioners or a duly elected or appointed executive officer of the county shall make written application to the department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:

(a) that the county will not be able to meet its obligations under law to provide assistance to the needy of the county or meet its proportionate share of any public assistance activity carried on jointly with the department;

(b) that all lawful sources of revenue and other income to the county poor fund will be exhausted;

(c) that all expenditures from the county poor fund have been lawfully made; and

(d) that all expenditures from the county poor fund have been reasonable and necessary, according to criteria set by the department in rules adopted for that purpose, for the county to meet its obligations under law to provide assistance to the needy.

(2) Within 10 days of receipt of the application and affidavit, the department shall determine whether the county poor fund will be depleted and shall give notice to the county of the department's intention to deny or allow the grant-in-aid. Before a grant-in-aid for any fiscal year may be made to a county under this section, any money credited during that fiscal year to the depletion allowance reserve fund from the sources provided by 7-34-2402(2) shall be transferred to the county poor fund to be used for lawful poor fund expenditures. The amount of the grant-in-aid shall be determined after all sources of income available to the poor fund, including the depletion allowance reserve fund transfers, have been exhausted.

(3) Within 10 days of receiving notice from the department that a grant-in-aid will be made to the county, the board of county commissioners or other duly elected or appointed executive officer of the county shall adopt an emergency budget. There is no requirement of notice and hearing for that emergency budget. The emergency budget shall state the amount required to meet the obligation of the county and shall allocate that whole amount among the various classes of expenditures for which the grant was made.

(4) Upon receipt and approval of the county emergency budget, the department shall issue a warrant to the county treasurer of the county for the total amount stated in the approved emergency budget.

(5) The grant-in-aid received by the county shall be placed in an emergency fund account to be kept separate and distinct from the poor fund account. All expenditures from the emergency fund account shall be made by

a separate series of warrants or checks marked as emergency warrants or checks.

(6) The grants-in-aid from the department may be used only for public assistance activities lawfully conducted by the county, including but not limited to medical aid, hospitalization, and institutional care. No part of a grant-in-aid may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances, or equipment for a county building.

(7) In the event the county poor fund is replenished by other lawful sources of revenue, the county shall issue warrants to meet its obligations from the county poor fund until such time as that fund is again so depleted that warrants can no longer lawfully be drawn on that account. Upon depletion of the county poor fund, the county may again make disbursements from the emergency fund account as provided in subsection (5). At the close of the county fiscal year, the county shall return to the department any amounts remaining in the county poor fund and the emergency fund account, but the remaining amount to be returned may not exceed the total amount of the emergency grant-in-aid for that fiscal year.

(8) Any amount which is unlawfully disbursed or transferred from the emergency fund account or used for a purpose other than that specified in the grant-in-aid shall be returned by the county to the department.

Compiler's Comments

Catchline Change: This section was not amended during the 1981 Special Session. However, the catchline was changed by the Code Commissioner to add the word "Emergency" in order to distinguish between grants provided for in this section and those provided for in section 2, Ch. 11, Sp. L. 1981 (see compiler's comments to 53-2-321). The history to this section remains the same as in the parent volume.

53-3-301. Amount of general relief assistance to be determined by county board. The amount of general relief assistance granted any person or family shall be determined by the county board of public welfare, according to rules and standards of assistance established by the board and approved by the department.

History: En. Sec. 12, Part 2, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1949; amd. Sec. 14, Ch. 199, L. 1951; amd. Sec. 32, Ch. 37, L. 1977; R.C.M. 1947, 71-314; amd. Sec. 1, Ch. 4, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Substituted "standards of assistance established by the board and approved by the department" for "standards of assistance established by the department".

Effective Date: Section 3, Ch. 4, Sp. L. 1981, provided: "This act is effective on January 1, 1982."

53-3-302. Payment by check or disbursing order. All general relief disbursements by county departments of public welfare shall be by warrant or check. General assistance needs may be met through disbursing orders that must subsequently be reimbursed through county payment procedures. Disbursing orders must be written in such form that the goods and services to be provided may be furnished by any regular dealer in such goods and services.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(part); amd. Sec. 2, Ch. 4, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Substituted second sentence for "However, if the county welfare department finds that a recipient is in the habit of dissipating general relief allowances instead of using them for the purposes intended or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments."; substituted "services" for "merchandise" and "merchandise within the county" in the last sentence.

Effective Date: Section 3, Ch. 4, Sp. L. 1981, provided: "This act is effective on January 1, 1982."

53-4-201. Definitions. (1) (a) The term "dependent child", for public assistance purposes, means:

(i) a child under the age of 18; or

(ii) a person under the age of 19 who is a student under the regulations prescribed by the department.

(b) The child ((a)(i) or (a)(ii) above) must be deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent and be living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin in a place of residence maintained by one or more of such relatives as his or their own home.

(2) The term "aid to dependent children" means money payments with respect to or payments made for medical care in behalf of a dependent child or dependent children, including money payments or payments made for medical care for any month to meet the needs of a relative with whom a dependent child is living if money payments have been made with respect to such child for such month. The term shall also include emergency assistance to families with children as provided by the federal Social Security Act.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

History: (1)En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 1, Ch. 309, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; Sec. 71-501, R.C.M. 1947; (2)En. Subd. (b), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 21, Ch. 199, L. 1951; amd. Sec. 5, Ch. 71, L. 1957; amd. Sec. 1, Ch. 292, L. 1971; Sec. 71-502, R.C.M. 1947; (3), (4)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-501(1), 71-502; amd. Sec. 1, Ch. 2, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Reduced age from 21 to 19 in (1)(a)(ii); deleted "continued unemployment" after "absence from the home" in (1)(b).

Effective Date: Section 3, Ch. 2, Sp. L. 1981, provided: "This act is effective on January 1, 1982."

53-4-231. Eligibility. (1) Assistance shall be granted under this part to any dependent child, as defined in 53-4-201, who is in need of such assistance.

(2) Aid to dependent children assistance payments may be made to a needy pregnant woman with no other children receiving such payments. Payments may begin no earlier than the third month prior to the month in which the child is expected to be born.

History: En. Sec. 3, Part 4, Ch. 82, L. 1937; Subds. (d) and (e) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 1, Ch. 148, L. 1947; amd. Sec. 1, Ch. 50, L. 1949; amd. Sec. 22, Ch. 199, L. 1951; amd. Sec. 1, Ch. 90, L. 1971; R.C.M. 1947, 71-504; amd. Sec. 3, Ch. 450, L. 1979; amd. Sec. 1, Ch. 10, Sp. L. 1981.

Compiler's Comments

1981 Special Session Amendment: Added subsection (2).

Effective Date: Section 2, Ch. 10, Sp. L. 1981, provided: "This act is effective on January 1, 1982."

53-4-234. Repealed. Sec. 2, Ch. 2, Sp. L. 1981.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(2).

53-4-235. Repealed. Sec. 2, Ch. 2, Sp. L. 1981.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(3).

53-4-236. Repealed. Sec. 2, Ch. 2, Sp. L. 1981.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(4).

53-4-237. Stepparent resources and income. Notwithstanding the provisions of 40-6-217, in the administration of this part the department may consider the income and resources of stepparents and other individuals who reside in the home as resources and income available to the household.

History: En. Sec. 1, Ch. 3, Sp. L. 1981.

Compiler's Comments

1981 Special Session Title: The title to Ch. 3, Sp. L. 1981 (HB 6), read: "An act to allow the department of social and rehabilitation services to consider the income and resources of stepparents and other individuals living in the home for the purpose of administering aid to dependent children; and providing an effective date."

Codification Instruction: Section 2, Ch. 3, Sp. L. 1981, provided: "Section 1 [53-4-237] is intended to be codified as an integral part of Title 53, chapter 4, part 2, and the provisions of Title 53, chapter 4, part 2, apply to section 1."

Effective Date: Section 3, Ch. 3, Sp. L. 1981, provided: "This act is effective on January 1, 1982."

53-4-238 through 53-4-240 reserved.

NG

MONTANA CODE ANNOTATED

Adopted by Chapter 1, Laws of 1979

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MONTANA CODE ANNOTATED
1981

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PREFACE

Adoption

Senate Bill No. 1, adopting the Montana Code Annotated (cited "MCA"), was passed by the 1979 Legislature and became effective January 10, 1979. That bill, which became Chapter 1, Laws of 1979, follows this preface. The provisions of law relating to recodification are found in Title 1, Chapter 11, MCA.

Codification

The MCA is a compilation of existing permanent law, including the acts of the 47th Legislature of 1981. Appropriation acts, resolutions, and laws temporary or special in character such as repealing, validating, severability, or effective date clauses are not codified. A list of R.C.M. 1947 sections not codified may be found in the *Table of Corresponding Code Sections,* 1978, green tab; the same information is contained in the *Table of Corresponding Code Sections,* R.C.M. 1947 to MCA, contained in Vol. 1 of the annotations, which provides the disposition of all R.C.M. 1947 sections. Whenever 1981 law was not codified, the existence of such law is noted in a compiler's comment printed below a related code section.

Arrangement

The Montana Code Annotated is arranged topically. This feature distinguishes the MCA from the 1947 code, in which the titles were arranged alphabetically. The user of the MCA will find titles that relate closely to one another logically and topically grouped together in the code. This arrangement results from four years of work that saw 15 revisions in the arrangement of titles. Continuous rearrangement designed to maintain an orderly and logical arrangement will be a permanent feature of the code under authority of Section 1-11-204(5)(b), MCA. Continuous revision should preclude the need for bulk revision in the future. The Legislative Council staff wants to hear your suggestions throughout the life of the code to assist in this effort.

Numbering System

The code uses a three element numbering system, familiar to 1947 code users because it is the numbering system incorporated in relatively recent enactments such as the Uniform Commercial Code, Uniform Probate Code, and the Criminal Code. The number to the far left designates the title number, the number between the hyphens designates the chapter number, and the number to the right, the part and section number. Thus, 1-11-111 would indicate Title 1, Chapter 11, Part 1, Section 11 (cited "section 1-11-111, MCA"). Numbering is sequential but numbers within chapters and parts and between titles have been skipped to leave room for future expansion.

Editorial Changes

During the recodification process the Council staff screened statutes for obsolescence, conflicts, unconstitutionality, incorrect grammar, spelling, capitalization, punctuation, numbering, and paragraphing.

Changes in style that could be made in the text without changing the substance of the law have been incorporated by the staff throughout the code. Other errors, inconsistencies, and unconstitutional statutes that were discovered were corrected by bills introduced in the 1977, 1979, and 1981 Legislative sessions at the request of the Code Commissioner.

Nonsubstantive changes include changes in the following areas:

(a) *Punctuation.* Being heavily laden with commas, the 1947 code did not conform with the more modern "open" style of punctuation that follows a sparing use of the comma. The modern style allowed deletion of an average of five commas per section and more than 125,000 commas from the new code with no change in its meaning, but with clarity enhanced.

(b) *Spelling.* The staff corrected obvious misspellings and updated archaic spellings with preferred spelling according to *Webster's New World Dictionary.*

(c) *Grammatical Construction.* There were three types of change that were made often under this category. One was making pronouns agree with their antecedents in number, gender, and person. Changing "nor" to "or" was also commonly done. "Nor" should not be used in the same clause with any other negative except "neither". Third, a verb often had to be changed to agree in number with the subject of a sentence.

(d) *Internal Numbering.* A uniform system of numbering internal paragraphs in a section was used: (1)(2)(3), (a)(b)(c), (i)(ii)(iii), (A)(B)(C). Thus, if the R.C.M. section began with "(a)(b)(c)," it was changed to "(1)(2)(3)," except for the Uniform Commercial Code, in which no changes in the numbering system were made.

(e) *"This Act".* The words "this act" were used thousands of times in the R.C.M. During recodification, "act" was changed wherever possible to a more precise term such as "title," "chapter," "part," or "section." The original act was studied to determine exactly to which statutes the words "this act" applied, and the appropriate references were then substituted.

(f) *Effective Date.* The calendar date was inserted whenever possible for expressions such as "the effective date of this act," after "passage and approval," or "hereafter."

(g) *Changes or Insertions Because of Rearrangement.* Language was inserted or changed whenever necessary because of rearrangement.

(h) *Redundancy.* Redundant words were eliminated.

(i) *Obsolete or Inaccurate References to Offices or Agencies.* There were many code sections needing changes because later acts affected names and terminology. For instance, the Executive Reorganization Act of 1971 abolished or renamed hundreds of offices and agencies. The recodification staff members searched the code for references to abolished or renamed offices and agencies. They also studied any amendments made between 1971 and 1977 that made further changes in the executive branch. After careful study to determine the exact state of the law, the language was changed during the recodification process to reflect the current legal status of all affected offices or agencies.

Code Commissioner Report

All changes, other than punctuation, capitalization, and spelling, made by the staff during the initial recodification are reported in a Code Commissioner Official Report contained in the unnumbered volume of the MCA 1978 (red). Following each legislative session, all such changes made since the last report are reported and published in the annotations, Vol. 1. (see Section 1-11-204(5)(c)MCA).

Effect of Changes

No presumption of legislative construction is to be drawn from the MCA code arrangement (Section 1-11-103, MCA). In case of inconsistencies resulting from omissions or other errors in the recodification, the version of the official enrolled bill on file with the Secretary of State will prevail. The recodification does not change the law, and the effect of each statute is the same as when originally enacted. Because the Code Commissioner has no legislative power, there can be no change in the law without legislative sanction. The function of recodification is to reorganize law, thus any changes in language are for the purpose of clarity, not for change in meaning.

Contents

(a) *Constitution and Rules of Court.* The code as adopted by Chapter 1, Laws of 1979, consists only of statute text and histories. The 1972 Montana Constitution, the Montana Rules of Civil Procedure, the Montana Rules of Appellate Civil Procedure, and the Montana Rules of Evidence are printed with the code for the convenience of the user.

(b) *Compiler's Comments.* Compiler's comments related to 1981 changes and to certain significant 1979 changes are printed with the code. Compiler's comments related to other items of permanent significance are contained in the annotations (See Preface to Annotations).

(c) *Histories.* The user is cautioned to note that the reported history of each section in the MCA brought forward from the former code is the same history of the section as it appeared in the old code. When an R.C.M. section is split into several MCA sections, the history may be confusing or even misleading. To redo all histories to have them coincide exactly with MCA sections would have been nearly impossible. Legislative histories begin with the Bannack Statutes of 1864–65. References to the California Code and the Field Codes of New York are also included since those codes are the source of Montana's 1892 Civil Code. Abbreviations used in the MCA histories are as follows:

amd.—Amended
Ap.p.—Appears in part
C.—Code
C. Civ. Proc.—Code of Civil Procedure
Cal.—California
Ch.—Chapter
Civ. C.—Civil Code
Cod.—Codified
Comp.—Compiled
Div.—Division
En.—Enacted
Field—Field Code of New York
I.M. No.—Initiative Measure Number
L.—Laws of
MCA—Montana Code Annotated
p.—Page
Pen. C.—Penal Code
Pol. C.—Political Code
R.C.M.—Revised Codes of Montana
redes—Redesignated
re-en.—Reenacted
rep.—Repealed
Rev.—Revised
Sec.—Section
Stat.—Statutes
Sup. Ct. Ord.—Supreme Court Order

Annotations

Annotations to the code are partially completed and appear in separate volumes correlating to the statute text. The Annotations are designed for insertion in three-ring binders and are released on a Title by Title basis as they are completed. See the Preface to Annotations in Vol. 1 of the annotations.

Index

The index is not complete. Certain titles are only "mini" indexed at this time. That is, they are indexed by title, chapter, and part but not individual sections. See the Preface and Guide to Usage of Index, which appears in Volume 9.

Diana S. Dowling

Diana S. Dowling
Code Commissioner
State Capitol
Helena, Montana 59620

October, 1981

THE

CONSTITUTION
OF THE
STATE OF MONTANA

AS ADOPTED BY THE CONSTITUTIONAL CONVENTION
MARCH 22, 1972 AND AS RATIFIED BY THE PEOPLE, JUNE 6, 1972

Preamble
Article
I. Compact with the United States.
II. Declaration of Rights.
III. General Government.
IV. Suffrage and Elections.
V. The Legislature.
VI. The Executive.
VII. The Judiciary.
VIII. Revenue and Finance.
IX. Environment and Natural Resources.
X. Education and Public Lands.
XI. Local Government.
XII. Departments and Institutions.
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XIV. Constitutional Revision.
Transition Schedule

PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

ARTICLE I

COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

ARTICLE II

DECLARATION OF RIGHTS

Section
1. Popular sovereignty.
2. Self-government.
3. Inalienable rights.
4. Individual dignity.
5. Freedom of religion.
6. Freedom of assembly.
7. Freedom of speech, expression, and press.
8. Right of participation.
9. Right to know.
10. Right of privacy.
11. Searches and seizures.
12. Right to bear arms.
13. Right of suffrage.
14. Adult rights.
15. Rights of persons not adults.
16. The administration of justice.
17. Due process of law.
18. State subject to suit.
19. Habeas corpus.
20. Initiation of proceedings.
21. Bail.
22. Excessive sanctions.
23. Detention.
24. Rights of the accused.
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26. Trial by jury.
27. Imprisonment for debt.
28. Rights of the convicted.
29. Eminent domain.
30. Treason and descent of estates.
31. Ex post facto, obligation of contracts, and irrevocable privileges.
32. Civilian control of the military.
33. Importation of armed persons.
34. Unenumerated rights.
35. Servicemen, servicewomen, and veterans.

Section 1. Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. Self-government. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Section 5. Freedom of religion. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Section 6. Freedom of assembly. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Section 7. Freedom of speech, expression, and press. No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Section 11. Searches and seizures. The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

Section 12. Right to bear arms. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Section 13. Right of suffrage. All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Section 14. Adult rights. A person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish an age of not more than 19 as the legal age for consuming or possessing alcoholic beverages.

Section 15. Rights of persons not adults. The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

Section 16. The administration of justice. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 17. Due process of law. No person shall be deprived of life, liberty, or property without due process of law.

Section 18. State subject to suit. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a ⅔ vote of each house of the legislature.

Section 19. Habeas corpus. The privilege of the writ of habeas corpus shall never be suspended.

Section 20. Initiation of proceedings. (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

Section 21. Bail. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

Section 22. Excessive sanctions. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

Section 23. Detention. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Section 24. Rights of the accused. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. Trial by jury. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. Imprisonment for debt. No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. Rights of the convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Section 29. Eminent domain. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 30. Treason and descent of estates. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Section 32. Civilian control of the military. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Section 33. Importation of armed persons. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

Section 34. Unenumerated rights. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

Section 35. Servicemen, servicewomen, and veterans. The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

ARTICLE III

GENERAL GOVERNMENT

Section
1. Separation of powers.
2. Continuity of government.
3. Oath of office.
4. Initiative.
5. Referendum.
6. Elections.
7. Number of electors.
8. Prohibition.
9. Gambling.

Section 1. Separation of powers. The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Section 2. Continuity of government. The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

Section 3. Oath of office. Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust.

Section 4. Initiative. (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

Section 5. Referendum. (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

Section 6. Elections. The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

Section 7. Number of electors. The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 8. Prohibition. The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

Section 9. Gambling. All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

ARTICLE IV

SUFFRAGE AND ELECTIONS

Section
1. Ballot.
2. Qualified elector.
3. Elections.
4. Eligibility for public office.
5. Result of elections.
6. Privilege from arrest.

Section 1. Ballot. All elections by the people shall be by secret ballot.

Section 2. Qualified elector. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Section 3. Elections. The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

Section 4. Eligibility for public office. Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

Section 5. Result of elections. In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

Section 6. Privilege from arrest. A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

ARTICLE V

THE LEGISLATURE

Section
1. Power and structure.
2. Size.
3. Election and terms.

4. Qualifications.
5. Compensation.
6. Sessions.
7. Vacancies.
8. Immunity.
9. Disqualification.
10. Organization and procedure.
11. Bills.
12. Local and special legislation.
13. Impeachment.
14. Districting and apportionment.

Section 1. Power and structure. The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

Section 2. Size. The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

Section 3. Election and terms. A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

Section 4. Qualifications. A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

Section 5. Compensation. Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Section 6. Sessions. The legislature shall meet each odd-numbered year in regular session of not more than 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

Compiler's Comments

Referendum for Annual Sessions: The question of whether the legislature should hold annual sessions will be submitted to the electors at the general election to be held in November 1982. See Ch. 517, L. 1981.

Section 7. Vacancies. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Section 8. Immunity. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

Section 9. Disqualification. No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

Section 10. Organization and procedure. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.

(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

Section 11. Bills. (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

Section 12. Local and special legislation. The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

Section 13. Impeachment. (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

ARTICLE VI

THE EXECUTIVE

Section

1. Officers.
2. Election.
3. Qualifications.
4. Duties.
5. Compensation.
6. Vacancy in office.
7. 20 departments.
8. Appointing power.
9. Budget and messages.
10. Veto power.

11. Special session.
12. Pardons.
13. Militia.
14. Succession.
15. Information for governor.

Section 1. Officers. (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

Section 2. Election. (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

Section 3. Qualifications. (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

Section 4. Duties. (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

Section 5. Compensation. (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

Section 6. Vacancy in office. (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.

Section 7. 20 departments. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

Section 8. Appointing power. (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

Section 9. Budget and messages. The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

Section 10. Veto power. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

Compiler's Comments

Referendum for Postsession Override: The question of whether the legislature should override a postsession veto through a poll of its members by the secretary of state will be submitted to the electors at the general election to be held in November 1982. See Ch. 611, L. 1981.

Section 11. Special session. Whenever the governor considers it in the public interest, he may convene the legislature.

Section 12. Pardons. The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

Section 13. Militia. (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

Section 14. Succession. (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office, becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

Section 15. Information for governor. (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

ARTICLE VII

THE JUDICIARY

Section

1. Judicial power.
2. Supreme court jurisdiction.
3. Supreme court organization.

4. District court jurisdiction.
5. Justices of the peace.
6. Judicial districts.
7. Terms and pay.
8. Selection.
9. Qualifications.
10. Forfeiture of judicial position.
11. Removal and discipline.

Section 1. Judicial power. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Section 2. Supreme court jurisdiction. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. Supreme court organization. (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Section 4. District court jurisdiction. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Section 5. Justices of the peace. (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

Section 6. Judicial districts. (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

Section 7. Terms and pay. (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

Section 8. Selection. (1) The governor shall nominate a replacement from nominees selected in the manner provided by law for any vacancy in the office of supreme court justice or district court judge. If the governor fails to nominate within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the nomination. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.

(3) If an incumbent does not run, there shall be an election for the office.

Section 9. Qualifications. (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. Every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed.

Section 10. Forfeiture of judicial position. Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

Section 11. Removal and discipline. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, and make rules implementing this section. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.

(4) The proceedings of the commission are confidential except as provided by statute.

Compiler's Comments

1980 Amendment: Constitutional Amendment No. 9 (see appendix to 1981 Laws of Montana) deleted "and keep its proceedings confidential" at the end of the first sentence of (2) and added (4).

ARTICLE VIII
REVENUE AND FINANCE

Section
1. Tax purposes.
2. Tax power inalienable.
3. Property tax administration.
4. Equal valuation.
5. Property tax exemptions.
6. Highway revenue non-diversion.
7. Tax appeals.
8. State debt.
9. Balanced budget.
10. Local government debt.
11. Use of loan proceeds.
12. Strict accountability.
13. Investment of public funds.
14. Prohibited payments.

Section 1. Tax purposes. Taxes shall be levied by general laws for public purposes.

Section 2. Tax power inalienable. The power to tax shall never be surrendered, suspended, or contracted away.

Section 3. Property tax administration. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

Section 4. Equal valuation. All taxing jurisdictions shall use the assessed valuation of property established by the state.

Section 5. Property tax exemptions. (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

Section 6. Highway revenue non-diversion. (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.

(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

Section 7. Tax appeals. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

Section 8. State debt. No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

Section 9. Balanced budget. Appropriations by the legislature shall not exceed anticipated revenue.

Section 10. Local government debt. The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

Section 11. Use of loan proceeds. All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

Section 12. Strict accountability. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Section 13. Investment of public funds. (1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except for monies contributed to retirement funds, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

Section 14. Prohibited payments. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

ARTICLE IX

ENVIRONMENT AND NATURAL RESOURCES

Section

1. Protection and improvement.
2. Reclamation.
3. Water rights.
4. Cultural resources.
5. Severance tax on coal — trust fund.

Section 1. Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

Section 2. Reclamation. (1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars ($100,000,000), guaranteed by the state against loss or diversion.

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

Section 4. Cultural resources. The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

Section 5. Severance tax on coal — trust fund. The legislature shall dedicate not less than one-fourth (¼) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (¾) of the members of each house of the legislature.

After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

ARTICLE X

EDUCATION AND PUBLIC LANDS

Section
1. Educational goals and duties.
2. Public school fund.
3. Public school fund inviolate.
4. Board of land commissioners.
5. Public school fund revenue.
6. Aid prohibited to sectarian schools.
7. Non-discrimination in education.
8. School district trustees.
9. Boards of education.
10. State university funds.
11. Public land trust, disposition.

Section 1. Educational goals and duties. (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

Section 2. Public school fund. The public school fund of the state shall consist of: (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,

(2) Lands granted in lieu thereof,

(3) Lands given or granted by any person or corporation under any law or grant of the United States,

(4) All other grants of land or money made from the United States for general educational purposes or without special purpose,

(5) All interests in estates that escheat to the state,

(6) All unclaimed shares and dividends of any corporation incorporated in the state,

(7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. Board of land commissioners. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. Public school fund revenue. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. Non-discrimination in education. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power,

responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Section 10. State university funds. The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

Section 11. Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

ARTICLE XI

LOCAL GOVERNMENT

Section
1. Definition.
2. Counties.
3. Forms of government.
4. General powers.
5. Self-government charters.
6. Self-government powers.
7. Intergovernmental cooperation.
8. Initiative and referendum.
9. Voter review of local government.

Section 1. Definition. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. Counties. The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

Section 3. Forms of government. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

Section 4. General powers. (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

Section 5. Self-government charters. (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

(a) Initiated by petition in the local government unit or combination of units; or

(b) Called by the governing body of the local government unit or combination of units.

(3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

Section 6. Self-government powers. A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

Section 7. Intergovernmental cooperation. (1) Unless prohibited by law or charter, a local government unit may

(a) cooperate in the exercise of any function, power, or responsibility with,

(b) share the services of any officer or facilities with,

(c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

(2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

Section 8. Initiative and referendum. The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

Section 9. Voter review of local government. (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require an election in each local government to determine whether a local government will undertake a review procedure once every ten years after the first election. Approval by a majority of those voting in the decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission. Study commission members shall be elected during any regularly scheduled election in local governments mandating their election.

ARTICLE XII

DEPARTMENTS AND INSTITUTIONS

Section
1. Agriculture.
2. Labor.
3. Institutions and assistance.

Section 1. Agriculture. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

Section 2. Labor. (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

Section 3. Institutions and assistance. (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

ARTICLE XIII

GENERAL PROVISIONS

Section
1. Non-municipal corporations.
2. Consumer counsel.
3. Salary commission.
4. Code of ethics.
5. Exemption laws.
6. Perpetuities.

Section 1. Non-municipal corporations. (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

Section 2. Consumer counsel. The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

Section 3. Salary commission. The legislature shall create a salary commission to recommend compensation for the judiciary and elected members of the legislative and executive branches.

Section 4. Code of ethics. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Section 5. Exemption laws. The legislature shall enact liberal homestead and exemption laws.

Section 6. Perpetuities. No perpetuities shall be allowed except for charitable purposes.

ARTICLE XIV

CONSTITUTIONAL REVISION

Section
1. Constitutional convention.
2. Initiative for constitutional convention.
3. Periodic submission.
4. Call of convention.
5. Convention expenses.
6. Oath, vacancies.
7. Convention duties.
8. Amendment by legislative referendum.
9. Amendment by initiative.
10. Petition signers.
11. Submission.

Section 1. Constitutional convention. The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

Section 2. Initiative for constitutional convention. (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

Section 3. Periodic submission. If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

Section 4. Call of convention. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

Section 5. Convention expenses. The legislature shall, in the act calling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

Section 6. Oath, vacancies. Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

Section 7. Convention duties. The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

Section 8. Amendment by legislative referendum. Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

Section 9. Amendment by initiative. (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

Section 10. Petition signers. The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

Section 11. Submission. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two.

Leo Graybill, Jr., President
Jean M. Bowman, Secretary
Magnus Aasheim
John H. Anderson, Jr.
Oscar L. Anderson
Harold Arbanas
Franklin Arness
Cedor B. Aronow
William H. Artz
Thomas M. Ask
Betty Babcock
Lloyd Barnard
Grace C. Bates
Don E. Belcher
Ben E. Berg, Jr.
E. M. Berthelson
Chet Blaylock
Virginia H. Blend
Geoffrey L. Brazier
Bruce M. Brown
Daphne Bugbee
William A. Burkhardt
Marjorie Cain
Bob Campbell
Jerome J. Cate
Richard J. Champoux
Lyman W. Choate
Max Conover
C. Louise Cross
Wade J. Dahood
Carl M. Davis
Douglas Delaney
Maurice Driscoll
Dave Drum
Dorothy Eck
Marian S. Erdmann
Leslie Eskildsen
Mark Etchart

James R. Felt
Donald R. Foster
Noel D. Furlong
J. C. Garlington
E. S. Gysler
Otto T. Habedank
Rod Hanson
R. S. Hanson
Gene Harbaugh
Paul K. Harlow
George Harper
Daniel W. Harrington
George B. Heliker
David L. Holland
Arnold W. Jacobsen
George H. James
Torrey B. Johnson
Thomas F. Joyce
A. W. Kamhoot
Robert Lee Kelleher
John H. Leuthold
Jerome T. Loendorf
Peter "Pete" Lorello
Joseph H. McCarvel
Russell C. McDonough
Mike McKeon
Charles B. McNeil
Charles H. Mahoney
Rachell K. Mansfield
Fred J. Martin
J. Mason Melvin
Lyle R. Monroe
Marshall Murray
Robert B. Noble
Richard A. Nutting
Mrs. Thomas Payne
Catherine Pemberton
Donald Rebal
Arlyne E. Reichert
Mrs. Mae Nan Robinson
Richard B. Roeder
George W. Rollins
Miles Romney
Sterling Rygg
Don Scanlin
John M. Schlitz
Henry Siderius
Clark E. Simon
Carman M. Skari
M. Lynn Sparks
Lucile Speer
R. J. Studer, Sr.
Mrs. John Justin
(Veronica) Sullivan
William H. Swanberg
John H. Toole
Mrs. Edith M. Van Buskirk
Robert Vermillion
Roger A. Wagner
Jack K. Ward
Margaret S. Warden
Archie O.Wilson
Robert F. Woodmansey

TRANSITION SCHEDULE

Transition Schedule. The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

Section 1. Accelerated Effective Date (Executed)
Section 2. Delayed Effective Date (Executed)
Section 3. Prospective Operation of Declaration of Rights
Section 4. Terms of Judiciary (Executed)
Section 5. Terms of Legislators (Executed)
Section 6. General Transition.

Section 1. Accelerated effective date. Executed (certified by letter, December 4, 1974).

Section 2. Delayed effective date. Executed (certified by letter, December 4, 1974).

Section 3. Prospective operation of declaration of rights. Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

Section 4. Terms of judiciary. Executed (certified by letter, December 20, 1978).

Section 5. Terms of legislators. Executed (certified by letter, February 22, 1977).

Section 6. General transition. (1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) Executed (certified by letter, February 22, 1977).

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CHAPTER 1

GENERAL PROVISIONS

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Part 1

Meaning of Law

1-1-101. Definition of law. "Law" is a solemn expression of the will of the supreme power of the state.

History: En. Sec. 5150, Pol. C. 1895; re-en. Sec. 3550, Rev. C. 1907; re-en. Sec. 5670, R.C.M. 1921; Cal. Pol. C. Sec. 4466; re-en. Sec. 5670, R.C.M. 1935; R.C.M. 1947, 12-101.

1-1-102. How expressed. The will of the supreme power is expressed by:

(1) the constitution;

(2) statutes.

History: En. Sec. 5151, Pol. C. 1895; re-en. Sec. 3551, Rev. C. 1907; re-en. Sec. 5671, R.C.M. 1921; Cal. Pol. C. Sec. 4467; re-en. Sec. 5671, R.C.M. 1935; R.C.M. 1947, 12-102.

1-1-103. Laws — written or unwritten. Laws, whether organic or ordinary, are either written or unwritten.

History: En. Sec. 3183, C. Civ. Proc. 1895; re-en. Sec. 7901, Rev. C. 1907; re-en. Sec. 10545, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1895; re-en. Sec. 10545, R.C.M. 1935; R.C.M. 1947, 93-1001-7.

1-1-104. Written law defined. A written law is that which is promulgated in writing and of which a record is in existence.

History: En. Sec. 3184, C. Civ. Proc. 1895; re-en. Sec. 7902, Rev. C. 1907; re-en. Sec. 10546, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1896; re-en. Sec. 10546, R.C.M. 1935; R.C.M. 1947, 93-1001-8.

1-1-105. Constitution and statutes. The organic law is the constitution of government and is altogether written. Other written laws are denominated statutes. The written law of this state is therefore contained in its constitution and statutes and in the constitution and statutes of the United States.

History: En. Sec. 3185, C. Civ. Proc. 1895; re-en. Sec. 7903, Rev. C. 1907; re-en. Sec. 10547, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1897; re-en. Sec. 10547, R.C.M. 1935; R.C.M. 1947, 93-1001-9.

1-1-106. Public and private statutes. Statutes are public or private. A private statute is one which concerns only certain designated individuals and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

History: En. Sec. 3186, C. Civ. Proc. 1895; re-en. Sec. 7904, Rev. C. 1907; re-en. Sec. 10548, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1898; re-en. Sec. 10548, R.C.M. 1935; R.C.M. 1947, 93-1001-10.

1-1-107. Unwritten law defined. Unwritten law is the law not promulgated and recorded, as mentioned in 1-1-104, but which is, nevertheless, observed and administered in the courts of the country. It has no certain repository but is collected from the reports of the decisions of the courts and treatises of learned men.

History: En. Sec. 3187, C. Civ. Proc. 1895; re-en. Sec. 7905, Rev. C. 1907; re-en. Sec. 10549, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1899; re-en. Sec. 10549, R.C.M. 1935; R.C.M. 1947, 93-1001-11.

1-1-108. Common law — applicability of. In this state there is no common law in any case where the law is declared by statute. But where not so declared, if the same is applicable and of a general nature and not in conflict with the statutes, the common law shall be the law and rule of decision.

History: En. Sec. 3452, C. Civ. Proc. 1895; re-en. Sec. 8060, Rev. C. 1907; re-en. Sec. 10703, R.C.M. 1921; re-en. Sec. 10703, R.C.M. 1935; R.C.M. 1947, 12-104.

1-1-109. Common law of England — when rule of decision. The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States or the constitution or laws of this state, is the rule of decision in all the courts of this state.

History: En. p. 356, Bannack Stat.; re-en. p. 388, Cod. Stat. 1871; re-en. Sec. 144, 5th Div. Rev. Stat. 1879; re-en. Sec. 201, 5th Div. Comp. Stat. 1887; amd. Sec. 5152, Pol. C. 1895; re-en. Sec. 3552, Rev. C. 1907; re-en. Sec. 5672, R.C.M. 1921; Cal. Pol. C. Sec. 4468; re-en. Sec. 5672, R.C.M. 1935; R.C.M. 1947, 12-103.

Part 2

General Definitions of Terms Used in Code

1-1-201. Terms of wide applicability. (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(a) "Oath" includes an affirmation or declaration.

(b) "Person" includes a corporation as well as a natural person.

(c) "Several" means two or more.

(d) "State", when applied to the different parts of the United States, includes the District of Columbia and the territories.

(e) "United States" includes the District of Columbia and the territories.

(2) Wherever the word "man" or "men" or a word which includes the syllable "man" or "men" in combination with other syllables, such as "workman", appears in this code, such word or syllable shall be deemed to include "woman" or "women" unless the context clearly indicates a contrary intent and unless the subject matter of the statute relates clearly and necessarily to the male sex only.

(3) Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day such statute shall take effect.

Whenever the word "hereafter" occurs, it shall be construed to mean the time after the statute containing the term shall take effect.

History: (1)En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (2)En. 12-216 by Sec. 61, Ch. 535, L. 1975; Sec. 12-217, R.C.M. 1947; (3)En. Sec. 4670, Civ. C. 1895; re-en. Sec. 6232, Rev. C. 1907; re-en. Sec. 8782, R.C.M. 1921; re-en. Sec. 8782, R.C.M. 1935; Sec. 19-104, R.C.M. 1947; R.C.M. 1947, 12-217, 19-103(part), (6), (7), (14), (27), (29), 19-104.

1-1-202. Terms relating to procedure and the judiciary. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) A "deposition" is a written declaration under oath or affirmation, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine.

(2) "Judicial officers" means justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges.

(3) A "judicial record" is the record of official entry of the proceedings in a court of justice or of the official act of a judicial officer in an action or special proceeding.

(4) "Magistrate" means any officer described in 46-1-201(6).

(5) An "oral examination" is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

(6) "Process" means a writ or summons issued in the course of judicial proceedings.

(7) For purposes of legal notification, the term "registered mail" includes registered or certified mail.

(8) "Testify" includes every mode of oral statement under oath or affirmation.

(9) "Writ" means an order in writing issued in the name of the state or of a court or judicial officer.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (1)En. Sec. 3322, C. Civ. Proc. 1895; re-en. Sec. 7989, Rev. C. 1907; re-en. Sec. 10633, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2004; re-en. Sec. 10633, R.C.M. 1935; Sec. 93-1601-3, R.C.M. 1947; (3)En. Sec. 3192, C. Civ. Proc. 1895; re-en. Sec. 7910, Rev. C. 1907; re-en. Sec. 10554, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1904; re-en. Sec. 10554, R.C.M. 1935; Sec. 93-1001-16, R.C.M. 1947; (5)En. Sec. 3323, C. Civ. Proc. 1895; re-en. Sec. 7990, Rev. C. 1907; re-en. Sec. 10634, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2005; Sec. 10634, R.C.M. 1935; Sec. 93-1601-4, R.C.M. 1947; (7)En. Sec. 1, Ch. 5, L. 1967; Sec. 19-122, R.C.M. 1947; R.C.M. 1947, 19-103(part), (9), (10), (13), (30), (31), (33), 19-122, 93-1001-16, 93-1601-3, 93-1601-4.

1-1-203. Terms relating to instruments and other writings. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) The "execution" of an instrument is the subscribing and delivering it, with or without affixing a seal.

(2) The term "folio", when used as a measure for computing fees, means 100 words, counting every two figures necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

(3) "Printing" is the act of reproducing a design on a surface by any process.

(4) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs his own name as a witness.

(5) A "subscribing witness" is one who sees a writing executed or hears it acknowledged and at the request of the party thereupon signs his name as a witness.

(6) "Writing" includes printing.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (1)En. Sec. 3224, C. Civ. Proc. 1895; re-en. Sec. 7937, Rev. C. 1907; re-en. Sec. 10581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1933; re-en. Sec. 10581, R.C.M. 1935; Sec. 93-1101-5, R.C.M. 1947; (2)En. Sec. 4618, Pol. C. 1895; re-en. Sec. 3151, Rev. C. 1907; re-en. Sec. 4899, R.C.M. 1921; re-en. Sec. 4899, R.C.M. 1935; Sec. 25-215, R.C.M. 1947; (3)En. Sec. 1, Ch. 267, L. 1969; amd. Sec. 11, Ch. 100, L. 1973; Sec. 19-103.1, R.C.M. 1947; (5)En. Sec. 3226, C. Civ. Proc. 1895; re-en. Sec. 7939, Rev. C. 1907; re-en. Sec. 10583, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1935; re-en. Sec. 10583, R.C.M. 1935; Sec. 93-1101-7, R.C.M. 1947; R.C.M. 1947, 19-103(part), (28), (32), 19-103.1, 25-215, 93-1101-5, 93-1101-7.

1-1-204. Terms denoting state of mind. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Corruptly" denotes a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to or to some other person.

(2) "Knowingly" denotes only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of the act or omission.

(3) "Malice" and "maliciously" denote a wish to vex, annoy, or injure another person or an intent to do a wrongful act, established either by proof or presumption of law.

(4) "Neglect", "negligence", "negligent", and "negligently" denote a want of the attention to the nature or probable consequences of the act or omission that a prudent man would ordinarily give in acting in his own concerns.

(5) "Willfully", when applied to the intent with which an act is done or omitted, denotes a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law, to injure another, or to acquire any advantage.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (19) thru (23).

1-1-205. Terms relating to property and decedents' estates. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Personal property" means money, goods, chattels, things in action, and evidences of debt.

(2) "Pledge", "mortgage", "conditional sale", "lien", "assignment", and like terms, when used in referring to a security interest in personal property, include a corresponding type of security interest under the Uniform Commercial Code—Secured Transactions.

(3) "Property" means real and personal property.

(4) "Real property" means lands, tenements, hereditaments, and possessory title to public lands.

(5) "Will" includes codicils.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (1), (2), (3), (8), (26).

1-1-206. Terms relating to obligations and transactions. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Customary" means according to usage.

(2) "Third persons" means all persons who are not parties to the obligation or transaction concerning which the phrase is used.

(3) "Usage" means a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general, and uniform that the parties must be presumed to have acted with reference thereto.

(4) "Usual" means according to usage.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (15) thru (18).

1-1-207. Miscellaneous terms. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, which is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in his action, vote, or opinion in any public or official capacity.

(2) "Peace officer" means any person described in 46-1-201(8).

(3) "Vessel", when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (11), (12), (24).

1-1-208 through 1-1-214 reserved.

1-1-215. Residence — rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

(1) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which he returns in seasons of repose.

(2) There can only be one residence.

(3) A residence cannot be lost until another is gained.

(4) The residence of his parents or, if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence of the parent with whom he customarily resides is the residence of the unmarried minor child. In case of a controversy, the district court may declare which parental residence is the residence of an unmarried minor child.

(5) The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

(6) The residence can be changed only by the union of act and intent.

History: En. Sec. 72, Pol. C. 1895; re-en. Sec. 32, Rev. C. 1907; re-en. Sec. 33, R.C.M. 1921; Cal. Pol. C. Sec. 52; re-en. Sec. 33, R.C.M. 1935; amd. Sec. 4, Ch. 164, L. 1975; R.C.M. 1947, 83-303.

1-1-216. Legal holidays and business days. (1) The following are legal holidays in the state of Montana:

(a) Each Sunday;
(b) New Year's Day, January 1;
(c) Lincoln's Birthday, February 12;
(d) Washington's Birthday, the third Monday in February;
(e) Memorial Day, the last Monday in May;
(f) Independence Day, July 4;
(g) Labor Day, the first Monday in September;
(h) Columbus Day, the second Monday in October;
(i) Veterans' Day, November 11;
(j) Thanksgiving Day, the fourth Thursday in November;
(k) Christmas Day, December 25;
(l) State general election day.

(2) If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days.

History: En. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R.C.M. 1921; Cal. Pol. C. Secs. 10-11; re-en. Sec. 10, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971; amd. Sec. 1, Ch. 16, L. 1974; R.C.M. 1947, 19-107(part).

1-1-217. Notice — actual and constructive. (1) Notice is:

(a) actual whenever it consists of express information of a fact;
(b) constructive whenever it is imputed by law.

(2) Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such facts.

History: (1)En. Sec. 4666, Civ. C. 1895; re-en. Sec. 6228, Rev. C. 1907; re-en. Sec. 8780, R.C.M. 1921; Cal. Civ. C. Sec. 18; Based on Field Civ. C. Secs. 2009, 2010; re-en. Sec. 8780, R.C.M. 1935; amd. Sec. 4, Ch. 309, L. 1977; Sec. 19-105, R.C.M. 1947; (2)En. Sec. 4667, Civ. C. 1895; re-en. Sec. 6229, Rev. C. 1907; re-en. Sec. 8781, R.C.M. 1921; Cal. Civ. C. Sec. 19; Based on Field Civ. C. Sec. 2011; re-en. Sec. 8781, R.C.M. 1935; R.C.M. 1947, 19-106; R.C.M. 1947, 19-105, 19-106.

1-1-218. Words giving joint authority. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it is otherwise expressed in the act giving the authority.

History: En. Sec. 14, Pol. C. 1895; re-en. Sec. 14, Rev. C. 1907; re-en. Sec. 14, R.C.M. 1921; Cal. Pol. C. Sec. 15; re-en. Sec. 14, R.C.M. 1935; R.C.M. 1947, 19-101.

1-1-219. Relationship by affinity. (1) Unless the context requires otherwise, in this code "affinity" means the relation which one spouse has, by virtue of the marriage, to blood relatives of the other. Therefore, a person has the same relation by affinity to his spouse's blood relatives as his spouse has to them by consanguinity and vice versa.

(2) Degrees of relationship by affinity are computed in the same manner as degrees of relationship by consanguinity.

(3) Notwithstanding subsection (1), the term "affinity" includes the relation of husband and wife. Husband and wife are considered to be related by affinity in the first degree.

History: En. Sec. 1, Ch. 119, L. 1979.

Part 3

Rules Concerning Time

1-1-301. Definitions. Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) "Year" means a calendar year.

(2) "Month" means a calendar month.

(3) A "week" consists of 7 consecutive days.

(4) A "day" is the period of time between any midnight and the midnight following.

(5) "Daytime" is the period of time between sunrise and sunset, and "nighttime" is the period of time between sunset and sunrise.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (3)En. Sec. 3143, Pol. C. 1895; re-en. Sec. 2030, Rev. C. 1907; re-en. Sec. 4280, R.C.M. 1921; Cal. Pol. C. Sec. 3258; re-en. Sec. 4280, R.C.M. 1935; Sec. 90-404, R.C.M. 1947; (4)En. Sec. 3144, Pol. C. 1895; re-en. Sec. 2031, Rev. C. 1907; re-en. Sec. 4281, R.C.M. 1921; Cal. Pol. C. Sec. 3259; re-en. Sec. 4281, R.C.M. 1935; Sec. 90-405, R.C.M. 1947; (5)En. Sec. 3145, Pol. C. 1895; re-en. Sec. 2032, Rev. C. 1907; re-en. Sec. 4282, R.C.M. 1921; Cal. Pol. C. Sec. 3260; re-en. Sec. 4282, R.C.M. 1935; Sec. 90-406, R.C.M. 1947; R.C.M. 1947, 19-103(part), (4), (5), 90-404, 90-405, 90-406.

1-1-302. Computation of time — what calendar used. Time is computed according to the Gregorian or new style, and January 1 in every year passed since 1752 or to come must be reckoned as the first day of the year.

History: En. Sec. 3140, Pol. C. 1895; re-en. Sec. 2027, Rev. C. 1907; re-en. Sec. 4277, R.C.M. 1921; Cal. Pol. C. Sec. 3255; re-en. Sec. 4277, R.C.M. 1935; R.C.M. 1947, 90-401.

1-1-303. Leap year. Except the year 1900, every fourth year which, by usage in this state, is considered a leap year is a leap year consisting of 366 days.

History: En. Sec. 3141, Pol. C. 1895; re-en. Sec. 2028, Rev. C. 1907; re-en. Sec. 4278, R.C.M. 1921; Cal. Pol. C. Sec. 3256; re-en. Sec. 4278, R.C.M. 1935; R.C.M. 1947, 90-402.

1-1-304. Computation of fractions of a year. Fractions of a year are computed by the number of months; thus, half a year is 6 months.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

1-1-305. Computation of time — when fractions of a day disregarded. Fractions of a day are disregarded in computations which include more than 1 day and involve no questions of priority.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

1-1-306. Computation of time — which days counted. The time in which any act provided by law is to be done is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded.

History: En. Sec. 430, p. 130, Bannack Stat.; amd. Sec. 501, p. 233, L. 1867; re-en. Sec. 578, p. 153, Cod. Stat. 1871; re-en. Sec. 519, p. 176, L. 1877; re-en. Sec. 519, 1st Div. Rev. Stat. 1879; re-en. Sec. 536, 1st Div. Comp. Stat. 1887; amd. Sec. 3459, C. Civ. Proc. 1895; re-en. Sec. 8067, Rev. C. 1907; re-en. Sec. 10707, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 12; re-en. Sec. 10707, R.C.M. 1935; R.C.M. 1947, 90-407.

1-1-307. Postponement of day appointed for an action when it falls on a holiday. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

History: En. Sec. 12, Pol. C. 1895; re-en. Sec. 12, Rev. C. 1907; re-en. Sec. 12, R.C.M. 1921; Cal. Pol. C. Sec. 13; re-en. Sec. 12, R.C.M. 1935; R.C.M. 1947, 19-109.

Part 4

Citizenship

1-1-401. People defined. The people, as a political body, consist of:

(1) electors;

(2) citizens not electors.

History: En. Sec. 70, Pol. C. 1895; re-en. Sec. 30, Rev. C. 1907; re-en. Sec. 31, R.C.M. 1921; Cal. Pol. C. Sec. 50; re-en. Sec. 31, R.C.M. 1935; R.C.M. 1947, 83-301.

1-1-402. Citizens defined. The citizens of the state are:

(1) all persons born in this state and residing within it, except the children of transient aliens;

(2) all persons born out of this state who are citizens of the United States and residing within this state.

History: En. Sec. 71, Pol. C. 1895; re-en. Sec. 31, Rev. C. 1907; re-en. Sec. 32, R.C.M. 1921; Cal. Pol. C. Sec. 51; re-en. Sec. 32, R.C.M. 1935; R.C.M. 1947, 83-302.

1-1-403. Allegiance. Allegiance is the obligation of fidelity and obedience which every citizen owes to the state.

History: En. Sec. 81, Pol. C. 1895; re-en. Sec. 34, Rev. C. 1907; re-en. Sec. 35, R.C.M. 1921; Cal. Pol. C. Sec. 55; re-en. Sec. 35, R.C.M. 1935; R.C.M. 1947, 83-402.

1-1-404. Allegiance — how renounced. Allegiance may be renounced by a change of residence.

History: En. Sec. 82, Pol. C. 1895; re-en. Sec. 35, Rev. C. 1907; re-en. Sec. 36, R.C.M. 1921; Cal. Pol. C. Sec. 56; re-en. Sec. 36, R.C.M. 1935; R.C.M. 1947, 83-403.

1-1-405. Persons not citizens. Persons in this state not its citizens are either:

(1) citizens of other states; or

(2) aliens.

History: **En. Sec. 83, Pol. C. 1895; re-en. Sec. 36, Rev. C. 1907; re-en. Sec. 37, R.C.M. 1921; Cal. Pol. C. Sec. 57; re-en. Sec. 37, R.C.M. 1935; R.C.M. 1947, 83-404.**

Part 5

State Symbols

1-1-501. Great seal. The great seal of the state is as follows: a central group representing a plow and a miner's pick and shovel; upon the right, a representation of the Great Falls of the Missouri River; upon the left, mountain scenery; and underneath, the words "Oro y Plata". The seal must be 2 ½ inches in diameter and surrounded by these words, "The Great Seal of the State of Montana".

History: **En. Sec. 1, p. 42, L. 1893; re-en. Sec. 1130, Pol. C. 1895; re-en. Sec. 430, Rev. C. 1907; re-en. Sec. 526, R.C.M. 1921; re-en. Sec. 526, R.C.M. 1935; R.C.M. 1947, 19-111.**

1-1-502. State flag. There is hereby established a state flag of Montana. The state flag of Montana shall be a flag having a blue field with a representation of the great seal of the state in the center and with golden fringe along the upper and lower borders of the flag; the same being the flag borne by the 1st Montana Infantry, U.S.V., in the Spanish-American War, with the exception of the device, "1st Montana Infantry, U.S.V."; and above the great seal of the state shall be the word "MONTANA" in Roman letters of gold color equal in height to one-tenth of the total vertical measurement of the blue field.

History: **En. Secs. 1, 2, Ch. 42, L. 1905; re-en. Secs. 432, 433, Rev. C. 1907; re-en. Secs. 528, 529, R.C.M. 1921; re-en. Secs. 528, 529, R.C.M. 1935; R.C.M. 1947, 19-113, 19-114; amd. Sec. 1, Ch. 49, L. 1981.**

Compiler's Comments

1981 Amendment: Added the final phrase relating to the word "MONTANA".

1-1-503. State floral emblem. The flower known as Lewisia rediviva (bitterroot) shall be the floral emblem of the state of Montana.

History: **En. Sec. 3282, Pol. C. 1895; re-en. Sec. 2097, Rev. C. 1907; re-en. Sec. 530, R.C.M. 1921; re-en. Sec. 530, R.C.M. 1935; R.C.M. 1947, 19-115.**

1-1-504. State bird. The bird known as the western meadowlark, Sturnella neglecta (Audubon), as preferred by a referendum vote of Montana school children, shall be designated and declared to be the official bird of the state of Montana.

History: **En. Sec. 1, Ch. 149, L. 1931; re-en. Sec. 530.1, R.C.M. 1935; R.C.M. 1947, 19-116.**

1-1-505. State gem stones. The sapphire and the Montana agate are the official Montana state gem stones.

History: **En. Sec. 1, Ch. 20, L. 1969; R.C.M. 1947, 19-123.**

1-1-506. State grass. The grass known as bluebunch wheatgrass, Agropyron spicatum (pursh), shall be designated and declared to be the official grass of the state of Montana.
History: En. 19-124 by Sec. 1, Ch. 378, L. 1973; R.C.M. 1947, 19-124.

1-1-507. State fish. The blackspotted cutthroat trout, Salmo clarki, is the official Montana state fish.
History: En. Sec. 1, Ch. 6, L. 1977; R.C.M. 1947, 19-125.

CHAPTER 2

STATUTORY CONSTRUCTION

Part 1 — General Provisions

Section

1-2-101. Role of the judge — preference to construction giving each provision meaning.
1-2-102. Intention of the legislature — particular and general provisions.
1-2-103. Statutes in derogation of the common law — liberal construction.
1-2-104. Preference to construction favoring natural right.
1-2-105. General definitional rules — verb tense, gender, and number.
1-2-106. Construction of words and phrases.
1-2-107. Applicability of definitions.
1-2-108. Reference to other titles, chapters, parts, or sections — subsequent amendments.
1-2-109. When laws retroactive.
1-2-110. All statutes subject to repeal.
1-2-111. Effect of code on special, local, and private statutes.
1-2-112. Statutes imposing new local government duties.
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Part 2 — Effect of Legislature's Actions

1-2-201. Statutes — effective date.
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1-2-203. Effect of amendment of statute.
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1-2-205. Repeal of law creating criminal offense.
1-2-206. Repeal of repealed statute.
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Part 1

General Provisions

1-2-101. Role of the judge — preference to construction giving each provision meaning. In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.
History: En. Sec. 612, p. 198, L. 1877; re-en. Sec. 612, 1st Div. Rev. Stat. 1879; re-en. Sec. 630, 1st Div. Comp. Stat. 1887; re-en. Sec. 3134, C. Civ. Proc. 1895; re-en. Sec. 7875, Rev. C. 1907; re-en. Sec. 10519, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1858; re-en. Sec. 10519, R.C.M. 1935; R.C.M. 1947, 93-401-15(part).

1-2-102. Intention of the legislature — particular and general provisions. In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

History: En. Sec. 613, p. 198, L. 1877; re-en. Sec. 613, 1st Div. Rev. Stat. 1879; re-en. Sec. 631, 1st Div. Comp. Stat. 1887; re-en. Sec. 3135, C. Civ. Proc. 1895; re-en. Sec. 7876, Rev. C. 1907; re-en. Sec. 10520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1859; re-en. Sec. 10520, R.C.M. 1935; R.C.M. 1947, 93-401-16(part).

1-2-103. Statutes in derogation of the common law — liberal construction. The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of the state of Montana. The statutes establish the law of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect their objects and to promote justice.

History: En. Sec. 4, Pol. C. 1895; re-en. Sec. 4, Rev. C. 1907; amd. Sec. 2, Ch. 4, L. 1921; re-en. Sec. 4, R.C.M. 1921; Cal. Pol. C. Sec. 4; re-en. Sec. 4, R.C.M. 1935; R.C.M. 1947, 12-202.

1-2-104. Preference to construction favoring natural right. When a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.

History: En. Sec. 620, p. 200, L. 1877; re-en. Sec. 620, 1st Div. Rev. Stat. 1879; re-en. Sec. 638, 1st Div. Comp. Stat. 1887; re-en. Sec. 3142, C. Civ. Proc. 1895; re-en. Sec. 7883, Rev. C. 1907; re-en. Sec. 10527, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1866; re-en. Sec. 10527, R.C.M. 1935; R.C.M. 1947, 93-401-23(part).

1-2-105. General definitional rules — verb tense, gender, and number. The following rules apply in this code:

(1) The present tense includes the future as well as the present.

(2) Words used in the masculine gender include the feminine and neuter.

(3) The singular includes the plural and the plural the singular.

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

1-2-106. Construction of words and phrases. Words and phrases used in the statutes of Montana are construed according to the context and the approved usage of the language, but technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law or are defined in chapter 1, part 2, as amended, are to be construed according to such peculiar and appropriate meaning or definition.

History: En. Sec. 15, Pol. C. 1895; re-en. Sec. 15, Rev. C. 1907; amd. Sec. 3, Ch. 4, L. 1921; re-en. Sec. 15, R.C.M. 1921; Cal. Pol. C. Sec. 16; re-en. Sec. 15, R.C.M. 1935; R.C.M. 1947, 19-102.

1-2-107. Applicability of definitions. Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

History: En. Sec. 4661, Civ. C. 1895; re-en. Sec. 6223, Rev. C. 1907; re-en. Sec. 8776, R.C.M. 1921; Field Civ. C. Sec. 2000; re-en. Sec. 8776, R.C.M. 1935; R.C.M. 1947, 12-215.

1-2-108. Reference to other titles, chapters, parts, or sections — subsequent amendments. (1) A statute which refers to a title, chapter, part, section, or subsection number without further identification or attribution is presumed, unless the context clearly indicates otherwise, to refer to a title, chapter, part, section, or subsection of the Montana Code Annotated.

(2) A specific or presumed reference to a title, chapter, part, section, or subsection of the Montana Code Annotated is presumed to be a reference to that title, chapter, part, section, or subsection as it may be amended or changed from time to time. This presumption may be overcome only by a clear showing that a subsequent amendment or change in the title, chapter, part, section, or subsection is inconsistent with the continued purpose or meaning of the section referring to it.

History: En. Sec. 1, Ch. 4, L. 1975; amd. Sec. 1, Ch. 309, L. 1977; R.C.M. 1947, 12-216; amd. Sec. 1, Ch. 30, L. 1979.

1-2-109. When laws retroactive. No law contained in any of the statutes of Montana is retroactive unless expressly so declared.

History: En. Sec. 3, Pol. C. 1895; re-en. Sec. 3, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1921; re-en. Sec. 3, R.C.M. 1921; Cal. Pol. C. Sec. 3; re-en. Sec. 3, R.C.M. 1935; R.C.M. 1947, 12-201.

1-2-110. All statutes subject to repeal. Any statute may be repealed at any time except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

History: En. Sec. 294, Pol. C. 1895; re-en. Sec. 121, Rev. C. 1907; re-en. Sec. 95, R.C.M. 1921; Cal. Pol. C. Sec. 326; re-en. Sec. 95, R.C.M. 1935; R.C.M. 1947, 43-512.

1-2-111. Effect of code on special, local, and private statutes. Nothing in this code affects any of the provisions of any special, local, or private statutes; but such statutes are recognized as continuing in force notwithstanding the provisions of this code, except so far as they have been repealed or affected by subsequent laws.

History: En. Sec. 18, Pol. C. 1895; re-en. Sec. 18, Rev. C. 1907; re-en. Sec. 18, R.C.M. 1921; Cal. Pol. C. Sec. 19; re-en. Sec. 18, R.C.M. 1935; R.C.M. 1947, 12-209.

1-2-112. Statutes imposing new local government duties. (1) Any law enacted by the legislature after July 1, 1979, which requires a local government unit to perform an activity or provide a service or facility which will require the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than the existing authorized mill levies or the all-purpose mill levy. Any law that fails to provide a specific means to finance any service or facility other than the existing authorized mill levies or the all-purpose mill levy is not effective until specific means of financing are provided by the legislature.

(2) The legislature may fulfill the requirements of this section by providing for an increase in the existing authorized mill levies or the all-purpose mill levy, special mill levies, or remission of money by the state of Montana to local governments; however, an increase in the existing authorized mill levies or the all-purpose mill levy or any special mill levy must provide an amount necessary to finance the additional costs and if financing is provided by remission of funds by the state of Montana, the remission shall bear a

reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) No subsequent legislation shall be considered to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

(4) This section shall not apply to any law under which the required expenditure of additional local funds is incidental to the main purpose of the law.

History: En. 43-517, 43-518 by Secs. 1, 2, Ch. 275, L. 1974; R.C.M. 1947, 43-517, 43-518; amd. Sec. 1, Ch. 217, L. 1979.

1-2-113. Statutes imposing new duties on a school district to provide means of financing. (1) Any law enacted by the legislature after July 1, 1981, except any law implementing a federal law or a court decision, that requires a school district to perform an activity or provide a service or facility and that will require the direct expenditure of additional funds shall provide a specific means to finance the activity, service, or facility other than the existing property tax mill levy. Any law that fails to provide a specific means to finance such a service or facility is not effective until a specific means of financing meeting the requirements of subsection (2) is provided by the legislature.

(2) Financing must be by means of a remission of money by the state for the purpose of funding the activity, service, or facility. Financing must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) No legislation passed and approved after October 1, 1981, supersedes or modifies any provision of this section, except to the extent that the legislation expressly does so.

(4) This section does not apply to any law under which the required expenditure of additional funds by the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing program.

History: En. Sec. 1, Ch. 596, L. 1981.

Compiler's Comments

1981 Title: The title to HB 367 (Ch. 596, L. 1981) read: "An act to insure that statutes that impose new duties on school districts provide a specific means of financing."

Part 2

Effect of Legislature's Actions

1-2-201. Statutes — effective date. (1) Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein.

(2) "Passage", as used in subsection (1), means the enactment into law of a bill which has passed the legislature either with or without the approval of the governor, as provided in the constitution.

History: (1)En. Sec. 3466, C. Civ. Proc. 1895; re-en. Sec. 8074, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1921; re-en. Sec. 90, R.C.M. 1921; Cal. Pol. C. Sec. 323; re-en. Sec. 90, R.C.M. 1935; Sec.

43-507, R.C.M. 1947; (2)En. Sec. 3467, C. Civ. Proc. 1895; re-en. Sec. 8075, Rev. C. 1907; re-en. Sec. 91, R.C.M. 1921; re-en. Sec. 91, R.C.M. 1935; amd. Sec. 20, Ch. 100, L. 1973; amd. Sec. 9, Ch. 309, L. 1977; Sec. 43-508, R.C.M. 1947; R.C.M. 1947, 43-507, 43-508; amd. Sec. 2, Ch. 119, L. 1979; amd. Sec. 1, Ch. 466, L. 1981.

Compiler's Comments

1981 Amendment: Substituted subsection (1) for "Every statute, unless a different time is prescribed therein, takes effect on the first day of July following its passage and approval".

Effective Date: Section 2, Ch. 466, L. 1981, provided: "This act is effective on passage and approval." Approved April 21, 1981.

1-2-202. Joint resolutions — effective date. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

History: En. Sec. 291, Pol. C. 1895; re-en. Sec. 118, Rev. C. 1907; re-en. Sec. 92, R.C.M. 1921; Cal. Pol. C. Sec. 324; re-en. Sec. 92, R.C.M. 1935; R.C.M. 1947, 43-509.

1-2-203. Effect of amendment of statute. Where a section or a part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

History: En. Sec. 292, Pol. C. 1895; re-en. Sec. 119, Rev. C. 1907; re-en. Sec. 93, R.C.M. 1921; Cal. Pol. C. Sec. 325; re-en. Sec. 93, R.C.M. 1935; R.C.M. 1947, 43-510.

1-2-204. Amendment of repealed act void. An act amending a section of an act repealed is void.

History: En. Sec. 297, Pol. C. 1895; re-en. Sec. 124, Rev. C. 1907; re-en. Sec. 98, R.C.M. 1921; Cal. Pol. C. Sec. 330; re-en. Sec. 98, R.C.M. 1935; R.C.M. 1947, 43-515.

1-2-205. Repeal of law creating criminal offense. The repeal of any law creating a criminal offense does not constitute a bar to an indictment or information and the punishment of an act already committed in violation of the law so repealed unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act.

History: En. Sec. 8, p. 390, Cod. Stat. 1871; re-en. Sec. 152, 5th Div. Rev. Stat. 1879; re-en. Sec. 209, 5th Div. Comp. Stat. 1887; amd. Sec. 296, Pol. C. 1895; re-en. Sec. 123, Rev. C. 1907; re-en. Sec. 97, R.C.M. 1921; Cal. Pol. C. Sec. 329; re-en. Sec. 97, R.C.M. 1935; R.C.M. 1947, 43-514.

1-2-206. Repeal of repealed statute. The repeal of any statute or part of a statute heretofore repealed must not be so construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

History: En. Sec. 5180, Pol. C. 1895; re-en. Sec. 3560, Rev. C. 1907; re-en. Sec. 5526, R.C.M. 1921; Cal. Pol. C. Sec. 4504; re-en. Sec. 5526, R.C.M. 1935; R.C.M. 1947, 12-213.

1-2-207. Repeal of repealing act — no revival. No act or part of an act repealed by another act of the legislature is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

History: En. Sec. 2, p. 390, Cod. Stat. 1871; re-en. Sec. 146, 5th Div. Rev. Stat. 1879; re-en. Sec. 203, 5th Div. Comp. Stat. 1887; amd. Sec. 295, Pol. C. 1895; re-en. Sec. 122, Rev. C. 1907; re-en. Sec. 96, R.C.M. 1921; Cal. Pol. C. Sec. 328; re-en. Sec. 96, R.C.M. 1935; R.C.M. 1947, 43-513.

CHAPTER 3

MAXIMS OF JURISPRUDENCE

Part 1 — General Provisions

Section
1-3-101. Purpose of maxims.

Part 2 — Text of Maxims

1-3-201. Obsolete reason, obsolete rule.
1-3-202. Same reason, same rule.
1-3-203. Change in purpose.
1-3-204. Waiver of benefit of a law.
1-3-205. Limit on rights.
1-3-206. Consent.
1-3-207. Acquiescence.
1-3-208. Own wrong — no advantage.
1-3-209. Fraudulent dispossession.
1-3-210. Acts on one's behalf.
1-3-211. Acts of others.
1-3-212. Benefit — burden.
1-3-213. Grant includes essentials.
1-3-214. Wrong — remedy.
1-3-215. Equal in right or wrong.
1-3-216. Preference to earliest.
1-3-217. Beyond man's control.
1-3-218. Vigilance.
1-3-219. Form and substance.
1-3-220. What ought to have been done.
1-3-221. Apparent nonexistence.
1-3-222. Impossibilities.
1-3-223. Idle acts.
1-3-224. Trifles.
1-3-225. Particular versus general.
1-3-226. Preference for contemporaneity.
1-3-227. Smaller within larger.
1-3-228. Superfluity.
1-3-229. Certainty.
1-3-230. Void act.
1-3-231. Principal.
1-3-232. Avoiding voidness.
1-3-233. Reasonableness.
1-3-234. Third parties — who suffers.

Part 1

General Provisions

1-3-101. Purpose of maxims. The maxims of jurisprudence set forth in part 2 of this chapter are intended not to qualify any of the other provisions of this code but to aid in their just application.

History: En. Sec. 4600, Civ. C. 1895; re-en. Sec. 6177, Rev. C. 1907; re-en. Sec. 8738, R.C.M. 1921; Cal. Civ. C. Sec. 3509; Field Civ. C. Sec. 1964; re-en. Sec. 8738, R.C.M. 1935; R.C.M. 1947, 49-101.

Part 2

Text of Maxims

1-3-201. Obsolete reason, obsolete rule. When the reason of a rule ceases, so should the rule itself.

History: En. Sec. 4601, Civ. C. 1895; re-en. Sec. 6178, Rev. C. 1907; re-en. Sec. 8739, R.C.M. 1921; Cal. Civ. C. Sec. 3510; Field Civ. C. Sec. 1965; re-en. Sec. 8739, R.C.M. 1935; R.C.M. 1947, 49-102.

1-3-202. Same reason, same rule. Where the reason is the same, the rule should be the same.

History: En. Sec. 4602, Civ. C. 1895; re-en. Sec. 6179, Rev. C. 1907; re-en. Sec. 8740, R.C.M. 1921; Cal. Civ. C. Sec. 3511; Field Civ. C. Sec. 1966; re-en. Sec. 8740, R.C.M. 1935; R.C.M. 1947, 49-103.

1-3-203. Change in purpose. One must not change his purpose to the injury of another.

History: En. Sec. 4603, Civ. C. 1895; re-en. Sec. 6180, Rev. C. 1907; re-en. Sec. 8741, R.C.M. 1921; Cal. Civ. C. Sec. 3512; Field Civ. C. Sec. 1967; re-en. Sec. 8741, R.C.M. 1935; R.C.M. 1947, 49-104.

1-3-204. Waiver of benefit of a law. Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

History: En. Sec. 4604, Civ. C. 1895; re-en. Sec. 6181, Rev. C. 1907; re-en. Sec. 8742, R.C.M. 1921; Cal. Civ. C. Sec. 3513; Field Civ. C. Sec. 1968; re-en. Sec. 8742, R.C.M. 1935; R.C.M. 1947, 49-105.

1-3-205. Limit on rights. One must so use his own rights as not to infringe upon the rights of another.

History: En. Sec. 4605, Civ. C. 1895; re-en. Sec. 6182, Rev. C. 1907; re-en. Sec. 8743, R.C.M. 1921; Cal. Civ. C. Sec. 3514; Field Civ. C. Sec. 1969; re-en. Sec. 8743, R.C.M. 1935; R.C.M. 1947, 49-106.

1-3-206. Consent. He who consents to an act is not wronged by it.

History: En. Sec. 4606, Civ. C. 1895; re-en. Sec. 6183, Rev. C. 1907; re-en. Sec. 8744, R.C.M. 1921; Cal. Civ. C. Sec. 3515; Field Civ. C. Sec. 1970; re-en. Sec. 8744, R.C.M. 1935; R.C.M. 1947, 49-107.

1-3-207. Acquiescence. Acquiescence in error takes away the right of objecting to it.

History: En. Sec. 4607, Civ. C. 1895; re-en. Sec. 6184, Rev. C. 1907; re-en. Sec. 8745, R.C.M. 1921; Cal. Civ. C. Sec. 3516; Field Civ. C. Sec. 1971; re-en. Sec. 8745, R.C.M. 1935; R.C.M. 1947, 49-108.

1-3-208. Own wrong — no advantage. No one can take advantage of his own wrong.

History: En. Sec. 4608; Civ. C. 1895; re-en. Sec. 6185, Rev. C. 1907; re-en. Sec. 8746, R.C.M. 1921; Cal. Civ. C. Sec. 3517; Field Civ. C. Sec. 1972; re-en. Sec. 8746, R.C.M. 1935; R.C.M. 1947, 49-109.

1-3-209. Fraudulent dispossession. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

History: En. Sec. 4609, Civ. C. 1895; re-en. Sec. 6186, Rev. C. 1907; re-en. Sec. 8747, R.C.M. 1921; Cal. Civ. C. Sec. 3518; Field Civ. C. Sec. 1973; re-en. Sec. 8747, R.C.M. 1935; R.C.M. 1947, 49-110.

1-3-210. Acts on one's behalf. He who can and does not forbid that which is done on his behalf is deemed to have bidden it.

History: En. Sec. 4610, Civ. C. 1895; re-en. Sec. 6187, Rev. C. 1907; re-en. Sec. 8748, R.C.M. 1921; Cal. Civ. C. Sec. 3519; Field Civ. C. Sec. 1974; re-en. Sec. 8748, R.C.M. 1935; R.C.M. 1947, 49-111.

1-3-211. Acts of others. No one should suffer for the act of another.

History: En. Sec. 4611, Civ. C. 1895; re-en. Sec. 6188, Rev. C. 1907; re-en. Sec. 8749, R.C.M. 1921; Cal. Civ. C. Sec. 3520; Field Civ. C. Sec. 1975; re-en. Sec. 8749, R.C.M. 1935; R.C.M. 1947, 49-112.

1-3-212. Benefit — burden. He who takes the benefit must bear the burden.

History: En. Sec. 4612, Civ. C. 1895; re-en. Sec. 6189, Rev. C. 1907; re-en. Sec. 8750, R.C.M. 1921; Cal. Civ. C. Sec. 3521; Field Civ. C. Sec. 1976; re-en. Sec. 8750, R.C.M. 1935; R.C.M. 1947, 49-113.

1-3-213. Grant includes essentials. One who grants a thing is presumed to grant also whatever is essential to its use.

History: En. Sec. 4613, Civ. C. 1895; re-en. Sec. 6190, Rev. C. 1907; re-en. Sec. 8751, R.C.M. 1921; Cal. Civ. C. Sec. 3522; Field Civ. C. Sec. 1977; re-en. Sec. 8751, R.C.M. 1935; R.C.M. 1947, 49-114.

1-3-214. Wrong — remedy. For every wrong there is a remedy.

History: En. Sec. 4614, Civ. C. 1895; re-en. Sec. 6191, Rev. C. 1907; re-en. Sec. 8752, R.C.M. 1921; Cal. Civ. C. Sec. 3523; Field Civ. C. Sec. 1978; re-en. Sec. 8752, R.C.M. 1935; R.C.M. 1947, 49-115.

1-3-215. Equal in right or wrong. Between those who are equally in the right or equally in the wrong, the law does not interpose.

History: En. Sec. 4615, Civ. C. 1895; re-en. Sec. 6192, Rev. C. 1907; re-en. Sec. 8753, R.C.M. 1921; Cal. Civ. C. Sec. 3524; Field Civ. C. Sec. 1979; re-en. Sec. 8753, R.C.M. 1935; R.C.M. 1947, 49-116.

1-3-216. Preference to earliest. Between rights otherwise equal, the earliest is preferred.

History: En. Sec. 4616, Civ. C. 1895; re-en. Sec. 6193, Rev. C. 1907; re-en. Sec. 8754, R.C.M. 1921; Cal. Civ. C. Sec. 3525; Field Civ. C. Sec. 1980; re-en. Sec. 8754, R.C.M. 1935; R.C.M. 1947, 49-117.

1-3-217. Beyond man's control. No man is responsible for that which no man can control.

History: En. Sec. 4617, Civ. C. 1895; re-en. Sec. 6194, Rev. C. 1907; re-en. Sec. 8755, R.C.M. 1921; Cal. Civ. C. Sec. 3526; Field Civ. C. Sec. 1981; re-en. Sec. 8755, R.C.M. 1935; R.C.M. 1947, 49-118.

1-3-218. Vigilance. The law helps the vigilant before those who sleep on their rights.

History: En. Sec. 4618, Civ. C. 1895; re-en. Sec. 6195, Rev. C. 1907; re-en. Sec. 8756, R.C.M. 1921; Cal. Civ. C. Sec. 3527; Field Civ. C. Sec. 1982; re-en. Sec. 8756, R.C.M. 1935; R.C.M. 1947, 49-119.

1-3-219. Form and substance. The law respects form less than substance.

History: En. Sec. 4619, Civ. C. 1895; re-en. Sec. 6196, Rev. C. 1907; re-en. Sec. 8757, R.C.M. 1921; Cal. Civ. C. Sec. 3528; Field Civ. C. Sec. 1983; re-en. Sec. 8757, R.C.M. 1935; R.C.M. 1947, 49-120.

1-3-220. What ought to have been done. That which ought to have been done is to be regarded as done, in favor of him to whom and against him from whom performance is due.

History: En. Sec. 4620, Civ. C. 1895; re-en. Sec. 6197, Rev. C. 1907; re-en. Sec. 8758, R.C.M. 1921; Cal. Civ. C. Sec. 3529; Field Civ. C. Sec. 1984; re-en. Sec. 8758, R.C.M. 1935; R.C.M. 1947, 49-121.

1-3-221. Apparent nonexistence. That which does not appear to exist is to be regarded as if it did not exist.

History: En. Sec. 4621, Civ. C. 1895; re-en. Sec. 6198, Rev. C. 1907; re-en. Sec. 8759, R.C.M. 1921; Cal. Civ. C. Sec. 3530; Field Civ. C. Sec. 1985; re-en. Sec. 8759, R.C.M. 1935; R.C.M. 1947, 49-122.

1-3-222. Impossibilities. The law never requires impossibilities.

History: En. Sec. 4622, Civ. C. 1895; re-en. Sec. 6199, Rev. C. 1907; re-en. Sec. 8760, R.C.M. 1921; Cal. Civ. C. Sec. 3531; Field Civ. C. Sec. 1986; re-en. Sec. 8760, R.C.M. 1935; R.C.M. 1947, 49-123.

1-3-223. Idle acts. The law neither does nor requires idle acts.

History: En. Sec. 4623, Civ. C. 1895; re-en. Sec. 6200, Rev. C. 1907; re-en. Sec. 8761, R.C.M. 1921; Cal. Civ. C. Sec. 3532; Field Civ. C. Sec. 1987; re-en. Sec. 8761, R.C.M. 1935; R.C.M. 1947, 49-124.

1-3-224. Trifles. The law disregards trifles.

History: En. Sec. 4624, Civ. C. 1895; re-en. Sec. 6201, Rev. C. 1907; re-en. Sec. 8762, R.C.M. 1921; Cal. Civ. C. Sec. 3533; Field Civ. C. Sec. 1988; re-en. Sec. 8762, R.C.M. 1935; R.C.M. 1947, 49-125.

1-3-225. Particular versus general. Particular expressions qualify those which are general.

History: En. Sec. 4625, Civ. C. 1895; re-en. Sec. 6202, Rev. C. 1907; re-en. Sec. 8763, R.C.M. 1921; Cal. Civ. C. Sec. 3534; Field Civ. C. Sec. 1989; re-en. Sec. 8763, R.C.M. 1935; R.C.M. 1947, 49-126.

1-3-226. Preference for contemporaneity. Contemporaneous exposition is in general the best.

History: En. Sec. 4626, Civ. C. 1895; re-en. Sec. 6203, Rev. C. 1907; re-en. Sec. 8764, R.C.M. 1921; Cal. Civ. C. Sec. 3535; Field Civ. C. Sec. 1990; re-en. Sec. 8764, R.C.M. 1935; R.C.M. 1947, 49-127.

1-3-227. Smaller within larger. The greater contains the less.

History: En. Sec. 4627, Civ. C. 1895; re-en. Sec. 6204, Rev. C. 1907; re-en. Sec. 8765, R.C.M. 1921; Cal. Civ. C. Sec. 3536; Field Civ. C. Sec. 1991; re-en. Sec. 8765, R.C.M. 1935; R.C.M. 1947, 49-128.

1-3-228. Superfluity. Superfluity does not vitiate.

History: En. Sec. 4628, Civ. C. 1895; re-en. Sec. 6205, Rev. C. 1907; re-en. Sec. 8766, R.C.M. 1921; Cal. Civ. C. Sec. 3537; Field Civ. C. Sec. 1992; re-en. Sec. 8766, R.C.M. 1935; R.C.M. 1947, 49-129.

1-3-229. Certainty. That is certain which can be made certain.

History: En. Sec. 4629, Civ. C. 1895; re-en. Sec. 6206, Rev. C. 1907; re-en. Sec. 8767, R.C.M. 1921; Cal. Civ. C. Sec. 3538; Field Civ. C. Sec. 1993; re-en. Sec. 8767, R.C.M. 1935; R.C.M. 1947, 49-130.

1-3-230. Void act. Time does not confirm a void act.

History: En. Sec. 4630, Civ. C. 1895; re-en. Sec. 6207, Rev. C. 1907; re-en. Sec. 8768, R.C.M. 1921; Cal. Civ. C. Sec. 3539; Field Civ. C. Sec. 1994; re-en. Sec. 8768, R.C.M. 1935; R.C.M. 1947, 49-131.

1-3-231. Principal. The incident follows the principal and not the principal the incident.

History: En. Sec. 4631, Civ. C. 1895; re-en. Sec. 6208, Rev. C. 1907; re-en. Sec. 8769, R.C.M. 1921; Cal. Civ. C. Sec. 3540; Field Civ. C. Sec. 1995; re-en. Sec. 8769, R.C.M. 1935; R.C.M. 1947, 49-132.

1-3-232. Avoiding voidness. An interpretation which gives effect is preferred to one which makes void.

History: En. Sec. 4632, Civ. C. 1895; re-en. Sec. 6209, Rev. C. 1907; re-en. Sec. 8770, R.C.M. 1921; Cal. Civ. C. Sec. 3541; Field Civ. C. Sec. 1996; re-en. Sec. 8770, R.C.M. 1935; R.C.M. 1947, 49-133.

1-3-233. Reasonableness. Interpretation must be reasonable.

History: En. Sec. 4633, Civ. C. 1895; re-en. Sec. 6210, Rev. C. 1907; re-en. Sec. 8771, R.C.M. 1921; Cal. Civ. C. Sec. 3542; Field Civ. C. Sec. 1997; re-en. Sec. 8771, R.C.M. 1935; R.C.M. 1947, 49-134.

1-3-234. Third parties — who suffers. Where one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer.

History: En. Sec. 4634, Civ. C. 1895; re-en. Sec. 6211, Rev. C. 1907; re-en. Sec. 8772, R.C.M. 1921; Cal. Civ. C. Sec. 3543; Field Civ. C. Sec. 1998; re-en. Sec. 8772, R.C.M. 1935; R.C.M. 1947, 49-135.

CHAPTER 4

INTERPRETATION OF INSTRUMENTS

Part 1 — General Provisions

Section

1-4-101. Role of the judge — preference to construction giving each provision meaning.
1-4-102. Consideration of circumstances surrounding execution.
1-4-103. Intention of the parties — particular and general provisions.
1-4-104. Preference to construction favoring natural right.
1-4-105. Written words versus words in printed form.
1-4-106. Interpretation of language according to usage in place of execution.
1-4-107. Construction of terms.
1-4-108. Construction of the terms of a notice.
1-4-109. Superseded. Supreme Court Order No. 12729, 7/10/79.

Part 2 — Seals

1-4-201. Seal defined.
1-4-202. Manner of making a seal.
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1-4-205. Effect of instruments without a seal.
1-4-206. Change in writing under seal by unsealed writing.
1-4-207. Compromise or settlement of a debt by unsealed writing.

Part 1

General Provisions

1-4-101. Role of the judge — preference to construction giving each provision meaning. In the construction of an instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

History: En. Sec. 612, p. 198, L. 1877; re-en. Sec. 612, 1st Div. Rev. Stat. 1879; re-en. Sec. 630, 1st Div. Comp. Stat. 1887; re-en. Sec. 3134, C. Civ. Proc. 1895; re-en. Sec. 7875, Rev. C. 1907; re-en. Sec. 10519, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1858; re-en. Sec. 10519, R.C.M. 1935; R.C.M. 1947, 93-401-15(part).

1-4-102. Consideration of circumstances surrounding execution. For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject of the instrument and of the parties to it, may also be shown so that the judge be placed in the position of those whose language he is to interpret.

History: En. Sec. 614, p. 199, L. 1877; re-en. Sec. 614, 1st Div. Rev. Stat. 1879; re-en. Sec. 632, 1st Div. Comp. Stat. 1887; re-en. Sec. 3136, C. Civ. Proc. 1895; re-en. Sec. 7877, Rev. C. 1907; re-en. Sec. 10521, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1860; re-en. Sec. 10521, R.C.M. 1935; R.C.M. 1947, 93-401-17.

1-4-103. Intention of the parties — particular and general provisions. In the construction of an instrument, the intention of the parties is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former so a particular intent will control a general one that is inconsistent with it.

History: En. Sec. 613, p. 198, L. 1877; re-en. Sec. 613, 1st Div. Rev. Stat. 1879; re-en. Sec. 631, 1st Div. Comp. Stat. 1887; re-en. Sec. 3135, C. Civ. Proc. 1895; re-en. Sec. 7876, Rev. C. 1907; re-en. Sec. 10520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1859; re-en. Sec. 10520, R.C.M. 1935; R.C.M. 1947, 93-401-16(part).

1-4-104. Preference to construction favoring natural right. When an instrument is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.

History: En. Sec. 620, p. 200, L. 1877; re-en. Sec. 620, 1st Div. Rev. Stat. 1879; re-en. Sec. 638, 1st Div. Comp. Stat. 1887; re-en. Sec. 3142, C. Civ. Proc. 1895; re-en. Sec. 7883, Rev. C. 1907; re-en. Sec. 10527, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1866; re-en. Sec. 10527, R.C.M. 1935; R.C.M. 1947, 93-401-23(part).

1-4-105. Written words versus words in printed form. When an instrument consists partly of written words and partly of a printed form and the two are inconsistent, the former control the latter.

History: En. Sec. 616, p. 199, L. 1877; re-en. Sec. 616, 1st Div. Rev. Stat. 1879; re-en. Sec. 634, 1st Div. Comp. Stat. 1887; re-en. Sec. 3138, C. Civ. Proc. 1895; re-en. Sec. 7879, Rev. C. 1907; re-en. Sec. 10523, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1862; re-en. Sec. 10523, R.C.M. 1935; R.C.M. 1947, 93-401-19.

1-4-106. Interpretation of language according to usage in place of execution. The language of a writing is to be interpreted according to the meaning it bears in the place of its execution unless the parties have reference to a different place.

History: En. Sec. 611, p. 198, L. 1877; re-en. Sec. 611, 1st Div. Rev. Stat. 1879; re-en. Sec. 629, 1st Div. Comp. Stat. 1887; re-en. Sec. 3133, C. Civ. Proc. 1895; re-en. Sec. 7874, Rev. C. 1907; re-en. Sec. 10518, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1857; re-en. Sec. 10518, R.C.M. 1935; R.C.M. 1947, 93-401-14.

1-4-107. Construction of terms. The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is nevertheless admissible that they have a local, technical, or otherwise peculiar signification and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.

History: En. Sec. 615, p. 199, L. 1877; re-en. Sec. 615, 1st Div. Rev. Stat. 1879; re-en. Sec. 633, 1st Div. Comp. Stat. 1887; re-en. Sec. 3137, C. Civ. Proc. 1895; re-en. Sec. 7878, Rev. C. 1907; re-en. Sec. 10522, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1861; re-en. Sec. 10522, R.C.M. 1935; R.C.M. 1947, 93-401-18.

1-4-108. Construction of the terms of a notice. A written notice, as well as every other writing, is to be construed according to the ordinary acceptation of its terms. Thus, a notice to the drawers or endorsers of a draft or promissory note that it has been protested for want of acceptance or payment must be held to import that any necessary presentment for acceptance or payment has been made, that the instrument has been dishonored, and that the holder looks for payment to the person to whom the notice is given.

History: En. Sec. 619, p. 200, L. 1877; re-en. Sec. 619, 1st Div. Rev. Stat. 1879; re-en. Sec. 637, 1st Div. Comp. Stat. 1887; re-en. Sec. 3141, C. Civ. Proc. 1895; re-en. Sec. 7882, Rev. C. 1907; re-en. Sec. 10526, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1865; re-en. Sec. 10526, R.C.M. 1935; amd. Sec. 11-170, Ch. 264, L. 1963; R.C.M. 1947, 93-401-22.

1-4-109. Superseded. Supreme Court Order No. 12729, 7/10/79.

History: En. Sec. 624, p. 201, L. 1877; re-en. Sec. 624, 1st Div. Rev. Stat. 1879; re-en. Sec. 642, 1st Div. Comp. Stat. 1887; re-en. Sec. 3146, C. Civ. Proc. 1895; re-en. Sec. 7887, Rev. C. 1907; re-en. Sec. 10531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1870; re-en. Sec. 10531, R.C.M. 1935; R.C.M. 1947, 93-401-27(part).

Part 2

Seals

1-4-201. Seal defined. (1) A "seal" is a particular sign made to attest in the most formal manner the execution of an instrument.

(2) A public seal in this state is a stamp or impression made by a public officer with an instrument provided by law to attest the execution of an official or public document. A private seal may be made in the same manner by any instrument.

History: (1)En. Sec. 3221, C. Civ. Proc. 1895; re-en. Sec. 7934, Rev. C. 1907; re-en. Sec. 10578, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1930; re-en. Sec. 10578, R.C.M. 1935; Sec. 93-1101-2, R.C.M. 1947; (2)En. Sec. 3222, C. Civ. Proc. 1895; re-en. Sec. 7935, Rev. C. 1907; re-en. Sec. 10579, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1931; re-en. Sec. 10579, R.C.M. 1935; Sec. 93-1101-3, R.C.M. 1947; R.C.M. 1947, 93-1101-2, 93-1101-3(part).

1-4-202. Manner of making a seal. "Seal", when the seal of a court or public officer is required by law to be affixed to any instrument, includes an impression of the seal upon the paper, or other material on which such instrument is written, alone or upon any substance attached to the paper or other material capable of receiving a visible impression. The seal of a private person may be made in like manner, by the scroll of a pen, or by writing the word "seal" against the signature of the writer.

History: Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; Ap. p. Sec. 2189, Civ. C. 1895; re-en. Sec. 5021, Rev. C. 1907; re-en. Sec. 7523, R.C.M. 1921; Cal. Civ. C. Sec. 1628; Based on Field Civ. C. Sec. 798; re-en. Sec. 7523, R.C.M. 1935; Sec. 13-610,

R.C.M. 1947; Ap. p. Sec. 3222, C. Civ. Proc. 1895; re-en. Sec. 7935, Rev. C. 1907; re-en. Sec. 10579, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1931; re-en. Sec. 10579, R.C.M. 1935; Sec. 93-1101-3, R.C.M. 1947 R.C.M. 1947, 13-610, 19-103(25), 93-1101-3(part).

1-4-203. Acceptance of foreign seals. A scroll or other sign made in a sister state or foreign country and there recognized as a seal must be so regarded in this state.

History: En. Sec. 3222, C. Civ. Proc. 1895; re-en. Sec. 7935, Rev. C. 1907; re-en. Sec. 10579, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1931; re-en. Sec. 10579, R.C.M. 1935; R.C.M. 1947, 93-1101-3(part).

1-4-204. Distinctions between sealed and unsealed abolished. All distinctions between sealed and unsealed instruments are abolished.

History: En. Sec. 2190, Civ. C. 1895; re-en. Sec. 5022, Rev. C. 1907; re-en. Sec. 7524, R.C.M. 1921; Cal. Civ. C. Sec. 1629; re-en. Sec. 7524, R.C.M. 1935; R.C.M. 1947, 13-611.

1-4-205. Effect of instruments without a seal. All instruments shall be as effectual without a seal as if the same had a seal attached thereto, but this section shall not apply to municipal or other corporations which by law are required to attest their action under seal.

History: En. Sec. 2191, Civ. C. 1895; re-en. Sec. 5023, Rev. C. 1907; re-en. Sec. 7525, R.C.M. 1921; re-en. Sec. 7525, R.C.M. 1935; R.C.M. 1947, 13-612.

1-4-206. Change in writing under seal by unsealed writing. There must be no difference in this state between sealed and unsealed writings. A writing under seal may therefore be changed or altogether discharged by a writing not under seal.

History: En. Sec. 3223, C. Civ. Proc. 1895; re-en. Sec. 7936, Rev. C. 1907; re-en. Sec. 10580, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1932; re-en. Sec. 10580, R.C.M. 1935; R.C.M. 1947, 93-1101-4.

1-4-207. Compromise or settlement of a debt by unsealed writing. An agreement in writing without a seal for the compromise or settlement of a debt is as obligatory as if a seal were affixed.

History: En. Sec. 3225, C. Civ. Proc. 1895; re-en. Sec. 7938, Rev. C. 1907; re-en. Sec. 10582, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1934; re-en. Sec. 10582, R.C.M. 1935; R.C.M. 1947, 93-1101-6.

CHAPTER 5

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS NOTARIES PUBLIC

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Sec. 14, Ch. 119, L. 1979)

Part 1

General Provisions — Proof and Acknowledgment

1-5-101. By whom and where acknowledgments may be taken. (1) The proof of acknowledgment of an instrument may be made at any place within this state before a justice or clerk of the supreme court or a judge of the district court.

(2) The proof of acknowledgment of an instrument may be made in this state within the city, county, or district for which the officer was elected or appointed, before either:

(a) a clerk of a court of record;
(b) a county clerk;
(c) a notary public;
(d) a justice of the peace; or

(e) a United States commissioner.

History: (1)En. Sec. 1600, Civ. C. 1895; re-en. Sec. 4654, Rev. C. 1907; re-en. Sec. 6905, R.C.M. 1921; Cal. Civ. C. Sec. 1180; Based on Field Civ. C. Sec. 516; re-en. Sec. 6905, R.C.M. 1935; Sec. 39-101, R.C.M. 1947; (2)En. Sec. 1601, Civ. C. 1895; re-en. Sec. 4655, Rev. C. 1907; amd. Sec. 1, Ch. 10, L. 1913; re-en. Sec. 6906, R.C.M. 1921; Cal. Civ. C. Sec. 1181; Based on Field Civ. C. Sec. 517; re-en. Sec. 6906, R.C.M. 1935; Sec. 39-102, R.C.M. 1947; R.C.M. 1947, 39-101, 39-102.

1-5-102. Acknowledgments taken outside this state. The proof of acknowledgment of an instrument may be made outside this state but within the United States and within the jurisdiction of the officer, before:

(1) a justice, judge, or clerk of any court of record of the United States;

(2) a justice, judge, or clerk of any court of record of any state or territory;

(3) a notary public; or

(4) any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.

History: En. Sec. 1602, Civ. C. 1895; re-en. Sec. 4656, Rev. C. 1907; re-en. Sec. 6907, R.C.M. 1921; Cal. Civ. C. Sec. 1182; Based on Field Civ. C. Sec. 518; re-en. Sec. 6907, R.C.M. 1935; R.C.M. 1947, 39-103; amd. Sec. 3, Ch. 119, L. 1979.

1-5-103. Proofs and acknowledgments taken outside the United States. The proof or acknowledgment of an instrument may be made without the United States before either:

(1) a minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made;

(2) a consul, vice consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made;

(3) a judge of a court of record of the country where the proof or acknowledgment is made;

(4) commissioners appointed for such purposes by the governor of the state pursuant to special statutes; or

(5) a notary public.

History: En. Sec. 1603, Civ. C. 1895; re-en. Sec. 4657, Rev. C. 1907; re-en. Sec. 6908, R.C.M. 1921; Cal. Civ. C. Sec. 1183; re-en. Sec. 6908, R.C.M. 1935; R.C.M. 1947, 39-104.

1-5-104. Proofs and acknowledgments by deputy officers. When any of the officers mentioned in 1-5-101 through 1-5-103 are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal.

History: En. Sec. 1604, Civ. C. 1895; re-en. Sec. 4658, Rev. C. 1907; re-en. Sec. 6909, R.C.M. 1921; Cal. Civ. C. Sec. 1184; re-en. Sec. 6909, R.C.M. 1935; R.C.M. 1947, 39-105.

1-5-105. Notarial acts by officers in the armed services. (1) In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, at the request of any person who:

(a) is a member of the armed forces of the United States;

(b) is serving as a merchant seaman outside the limits of the continental United States, excluding Alaska; or

(c) is outside the limits of the United States of America by permission, assignment, or direction of any department or official of the United States government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

(2) Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, heretofore or hereafter made or taken, are valid and binding; and instruments and documents so acknowledged, authenticated, or sworn to are admissible in evidence and eligible to be recorded in this state under the same circumstances and with the same effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

(3) In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument under oath is sufficient for all purposes. The instrument is not rendered invalid by the failure to state the place of execution or acknowledgment.

(4) The signature, rank, and branch of service or subdivision thereof of any such commissioned officer must appear upon the instrument or certificate, and no further proof of the authority of the officer to so act is required. Such action by the commissioned officer is prima facie evidence that the person making the oath or acknowledgment is within the purview of this section.

History: En. Sec. 1, Ch. 117, L. 1945; R.C.M. 1947, 39-106; amd. Sec. 4, Ch. 119, L. 1979.

1-5-106. Officers to authenticate certificate. Officers taking and certifying acknowledgments or proof of instruments for record must authenticate their certificates by affixing their signatures, followed by the names of their offices, also their seals of office if, by the laws of the state or country where the acknowledgment or proof is taken or by authority of which they are acting, they are required to have official seals.

History: En. Sec. 1613, Civ. C. 1895; re-en. Sec. 4667, Rev. C. 1907; re-en. Sec. 6918, R.C.M. 1921; Cal. Civ. C. Sec. 1193; re-en. Sec. 6918, R.C.M. 1935; R.C.M. 1947, 39-115.

1-5-107. Certificate of clerk authenticating justice of the peace's certificate. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of making such proof or acknowledgment, was authorized to take the same and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine.

History: En. Sec. 1614, Civ. C. 1895; re-en. Sec. 4668, Rev. C. 1907; re-en. Sec. 6919, R.C.M. 1921; Cal. Civ. C. Sec. 1194; re-en. Sec. 6919, R.C.M. 1935; R.C.M. 1947, 39-116.

1-5-108. Action to correct defective certificate. When the acknowledgment or proof of the execution of an instrument is properly made but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

History: En. Sec. 1622, Civ. C. 1895; re-en. Sec. 4676, Rev. C. 1907; re-en. Sec. 6927, R.C.M. 1921; Cal. Civ. C. Sec. 1202; re-en. Sec. 6927, R.C.M. 1935; R.C.M. 1947, 39-124.

1-5-109. Action for judgment proving an instrument. Any person interested under an instrument entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

History: En. Sec. 1623, Civ. C. 1895; re-en. Sec. 4677, Rev. C. 1907; re-en. Sec. 6928, R.C.M. 1921; Cal. Civ. C. Sec. 1203; re-en. Sec. 6928, R.C.M. 1935; R.C.M. 1947, 39-125.

1-5-110. Effect of judgment correcting defect or proving instrument. A certified copy of the judgment in a proceeding instituted under 1-5-108 or 1-5-109 showing the proof of the instrument and attached thereto entitles such instrument to record with the like effect as if acknowledged.

History: En. Sec. 1624, Civ. C. 1895; re-en. Sec. 4678, Rev. C. 1907; re-en. Sec. 6929, R.C.M. 1921; Cal. Civ. C. Sec. 1204; re-en. Sec. 6929, R.C.M. 1935; R.C.M. 1947, 39-126.

Part 2

Acknowledgment

1-5-201. Requirement that officer have evidence of authority of person making acknowledgment. The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence that the person making such acknowledgment is the individual who is described in and who executed the instrument or, if executed by a corporation, that the person making such acknowledgment is the president, vice-president, secretary, or assistant secretary of such corporation or other person duly authorized by resolution of such corporation, who executed it on its behalf.

History: En. Sec. 1605, Civ. C. 1895; re-en. Sec. 4659, Rev. C. 1907; amd. Sec. 1, Ch. 2, L. 1913; re-en. Sec. 6910, R.C.M. 1921; Cal. Civ. C. Sec. 1185; re-en. Sec. 6910, R.C.M. 1935; amd. Sec. 1, Ch. 171, L. 1937; amd. Sec. 1, Ch. 12, L. 1974; R.C.M. 1947, 39-107.

1-5-202. Officer to certify acknowledgment. An officer taking the acknowledgment of an instrument must endorse thereon or attach thereto a certificate substantially in the forms prescribed in this part.

History: En. Sec. 1608, Civ. C. 1895; re-en. Sec. 4662, Rev. C. 1907; re-en. Sec. 6913, R.C.M. 1921; Cal. Civ. C. Sec. 1188; re-en. Sec. 6913, R.C.M. 1935; R.C.M. 1947, 39-110.

1-5-203. General form of certificate of acknowledgment. The certificate of acknowledgment, unless it is otherwise in this part provided, must be substantially in the following form:

State of ....
County of ....

On this .... day of .... in the year ...., before me (here insert the name and quality of the officer), personally appeared ...., known to me (or proved to me on the oath of ....) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (she or they) executed the same.

History: En. Sec. 1609, Civ. C. 1895; re-en. Sec. 4663, Rev. C. 1907; re-en. Sec. 6914, R.C.M. 1921; Cal. Civ. C. Sec. 1189; re-en. Sec. 6914, R.C.M. 1935; R.C.M. 1947, 39-111.

1-5-204. Form of certificate of acknowledgment by corporation. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

State of ....
County of ....

On this .... day of .... in the year ...., before me (here insert the name and quality of the officer), personally appeared ...., known to me (or proved to me on the oath of ....) to be the president (or vice-president, secretary, or assistant secretary) of the corporation that executed the within instrument [where, however, the instrument is executed in behalf of the corporation by someone other than the president, vice-president, secretary, or assistant secretary, insert: known to me (or proved to me on the oath of ....) to be the person who executed the within instrument on behalf of the corporation therein named], and acknowledged to me that such corporation executed the same.

History: En. Sec. 1612, Civ. C. 1895; re-en. Sec. 4664, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1913; re-en. Sec. 6915, R.C.M. 1921; Cal. Civ. C. Sec. 1190; re-en. Sec. 6915, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1937; R.C.M. 1947, 39-112.

1-5-205. Form of certificate of acknowledgment by attorney-in-fact. The certificate of acknowledgment by an attorney-in-fact must be substantially in the following form:

State of ....
County of ....

On this .... day of .... in the year ...., before me (here insert the name and quality of the officer), personally appeared ...., known to me (or proved to me on the oath of ....) to be the person whose name is subscribed to the within instrument as the attorney-in-fact of ...., and acknowledged to me that he subscribed the name of .... thereto as principal and his own name as attorney-in-fact.

History: En. Sec. 1612, Civ. C. 1895; re-en. Sec. 4666, Rev. C. 1907; re-en. Sec. 6917, R.C.M. 1921; Cal. Civ. C. Sec. 1192; re-en. Sec. 6917, R.C.M. 1935; R.C.M. 1947, 39-114.

1-5-206. Acknowledgment by married person. (1) The acknowledgment of a married person to an instrument purporting to be executed by such person must be taken the same as that of any other person.

(2) A conveyance by a married person has the same effect as if such person were unmarried and may be acknowledged in the same manner.

History: (1)En. Sec. 1606, Civ. C. 1895; re-en. Sec. 4660, Rev. C. 1907; re-en. Sec. 6911, R.C.M. 1921; Cal. Civ. C. Sec. 1186; re-en. Sec. 6911, R.C.M. 1935; amd. Sec. 16, Ch. 535, L. 1975; Sec. 39-108, R.C.M. 1947; (2)En. Sec. 1607, Civ. C. 1895; re-en. Sec. 4661, Rev. C. 1907; re-en. Sec. 6912,

R.C.M. 1921; Cal. Civ. C. Sec. 1187; Based on Field Civ. C. Sec. 522; re-en. Sec. 6912, R.C.M. 1935; amd. Sec. 17, Ch. 535, L. 1975; Sec. 39-109, R.C.M. 1947; R.C.M. 1947, 39-108, 39-109.

1-5-207. Form of certificate of acknowledgment by married person. The certificate of acknowledgment by a married person must be substantially in the form prescribed in 1-5-203.

History: En. Sec. 1611, Civ. C. 1895; re-en. Sec. 4665, Rev. C. 1907; re-en. Sec. 6916, R.C.M. 1921; Cal. Civ. C. Sec. 1191; re-en. Sec. 6916, R.C.M. 1935; amd. Sec. 18, Ch. 535, L. 1975; R.C.M. 1947, 39-113.

1-5-208. Effect of acknowledgment taken in accordance with another state's laws. Notwithstanding any provision contained in this chapter, the acknowledgment of any instrument without this state in compliance with the manner and form prescribed by the laws of the place of its execution, if in a state, territory, or insular possession of the United States or in the District of Columbia, verified by the official seal of the officer before whom it is acknowledged, shall have the same effect as an acknowledgment in the manner and form prescribed by the laws of this state for instruments executed within the state.

History: En. Sec. 1, Ch. 81, L. 1953; R.C.M. 1947, 39-103.1.

Part 3

Proof of Execution

1-5-301. Who may prove execution of instrument. Proof of the execution of an instrument which has not been acknowledged may be made by:

(1) all of the parties who executed it or any one of them;

(2) a subscribing witness; or

(3) other witnesses in cases mentioned in 1-5-302.

History: En. Sec. 1615, Civ. C. 1895; re-en. Sec. 4669, Rev. C. 1907; re-en. Sec. 6920, R.C.M. 1921; Cal. Civ. C. Sec. 1195; re-en. Sec. 6920, R.C.M 1935; R.C.M. 1947, 39-117; amd. Sec. 5, Ch. 119, L. 1979.

1-5-302. When execution may be proved by handwriting. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

(1) when the parties and all the subscribing witnesses are dead;

(2) when the parties and all the subscribing witnesses are nonresidents of the state;

(3) when the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;

(4) when the subscribing witness conceals himself or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or

(5) in case of the continued failure or refusal of the witness to testify for the space of 1 hour after his appearance.

History: En. Sec. 1618, Civ. C. 1895; re-en. Sec. 4672, Rev. C. 1907; re-en. Sec. 6923, R.C.M. 1921; Cal. Civ. Sec. 1198; re-en. Sec. 6923, R.C.M. 1935; R.C.M. 1947, 39-120.

1-5-303. Facts which must be shown when offering proof of handwriting. The evidence taken under 1-5-302 must satisfactorily prove to the officer the following facts:

(1) the existence of one or more of the conditions mentioned in 1-5-302;

(2) that the witness testifying knew the person whose name purports to be subscribed to the instrument as a party and is well acquainted with his signature;

(3) that the witness testifying personally knew the person who subscribed the instrument as a witness and is well acquainted with his signature;

(4) that the signature or signatures in question are genuine; and

(5) the place of residence of the witness.

History: En. Sec. 1619, Civ. C. 1895; re-en. Sec. 4673, Rev. C. 1907; re-en. Sec. 6924, R.C.M. 1921; Cal. Civ. C. Sec. 1199; re-en. Sec. 6924, R.C.M. 1935; R.C.M. 1947, 39-121; amd. Sec. 6, Ch. 119, L. 1979.

1-5-304. Powers of officer taking proof of execution. Officers authorized to take the proof of instruments are authorized in such proceedings to:

(1) administer oaths or affirmations as prescribed by law;

(2) employ and swear interpreters; and

(3) issue subpoenas as prescribed by law.

History: En. Sec. 1621, Civ. C. 1895; re-en. Sec. 4675, Rev. C. 1907; re-en. Sec. 6926, R.C.M. 1921; Cal. Civ. C. Sec. 1201; re-en. Sec. 6926, R.C.M. 1935; R.C.M. 1947, 39-123; amd. Sec. 7, Ch. 119, L. 1979.

1-5-305. Contents of certificate of proof. An officer taking proof of the execution of any instrument must, in his certificate endorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

History: En. Sec. 1620, Civ. C. 1895; re-en. Sec. 4674, Rev. C. 1907; re-en. Sec. 6925, R.C.M. 1921; Cal. Civ. C. Sec. 1200; Based on Field Civ. C. Sec. 526; re-en. Sec. 6925, R.C.M. 1935; R.C.M. 1947, 39-122.

Part 4

Notaries Public

1-5-401. Appointment. The governor may appoint and commission as many notaries public for the state of Montana as in his judgment may be deemed best.

History: En. Sec. 910, Pol. C. 1895; re-en. Sec. 317, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1909; re-en. Sec. 385, R.C.M. 1921; Cal. Pol. C. Sec. 791; re-en. Sec. 385, R.C.M. 1935; R.C.M. 1947, 56-101(part).

1-5-402. Qualifications — residence. Every person appointed as notary public must, at the time of his appointment, be a citizen of the United States and of the state of Montana for at least 1 year preceding his appointment and must continue to reside within the state of Montana. Removal from the state vacates his office and is equivalent to resignation.

History: En. Sec. 911, Pol. C. 1895; re-en. Sec. 318, Rev. C. 1907; amd. Sec. 2, Ch. 103, L. 1909; re-en. Sec. 386, R.C.M. 1921; Cal. Pol. C. Sec. 792; re-en. Sec. 386, R.C.M. 1935; R.C.M. 1947, 56-102.

1-5-403. Term of office. The term of office of a notary public is 3 years from and after the date of his commission.

History: En. Sec. 912, Pol. C. 1895; re-en. Sec. 319, Rev. C. 1907; re-en. Sec. 387, R.C.M. 1921; Cal. Pol. C. Sec. 793; re-en. Sec. 387, R.C.M. 1935; R.C.M. 1947, 56-103.

1-5-404. Revocation of commission. Upon 10 days' notice, the governor may revoke the commission of any notary public for any cause he may deem sufficient.

History: En. Sec. 922, Pol. C. 1895; re-en. Sec. 329, Rev. C. 1907; re-en. Sec. 398, R.C.M. 1921; re-en. Sec. 398, R.C.M. 1935; R.C.M. 1947, 56-114.

1-5-405. Bond and commission. Each notary public must give an official bond in the sum of $1,000, which bond must be approved by the secretary of state. Upon the approval of said bond and the filing in the office of the secretary of state of the official oath of such notary public, the governor shall issue a commission.

History: En. Secs. 324-325, Rev. C. 1907; amd. Sec. 5, Ch. 103, L. 1909; amd. Sec. 1, Ch. 7, L. 1921; re-en. Sec. 394, R.C.M. 1921; Cal. Pol. C. Sec. 799; re-en. Sec. 394, R.C.M. 1935; R.C.M. 1947, 56-110.

1-5-406. Liabilities on official bond. For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all damages sustained.

History: En. Sec. 919, Pol. C. 1895; re-en. Sec. 326, Rev. C. 1907; re-en. Sec. 395, R.C.M. 1921; Cal. Pol. C. Sec. 801; re-en. Sec. 395, R.C.M. 1935; R.C.M. 1947, 56-111.

1-5-407. Certifying the official character of a notary. The secretary of state may certify to the official character of such notary public. Any notary public may file a copy of his commission in the office of any county clerk of any county in the state, and thereafter said county clerk may certify to the official character of such notary public.

History: En. Sec. 2, p. 101, L. 1885; re-en. Sec. 1569, 5th Div. Comp. Stat. 1887; re-en. Sec. 920, Pol. C. 1895; re-en. Sec. 327, Rev. C. 1907; amd. Sec. 6, Ch. 103, L. 1909; re-en. Sec. 396, R.C.M. 1921; re-en. Sec. 396, R.C.M. 1935; R.C.M. 1947, 56-112.

1-5-408. Fees for filing commission and issuing certificates. The secretary of state shall receive for each certificate of official character issued, with seal attached, $2. The county clerk of any county in this state with whom a copy of notarial commission has been filed shall receive for filing same 50 cents and for each certificate of official character issued, with seal attached, 50 cents.

History: En. Sec. 3, p. 101, L. 1885; re-en. Sec. 1570, 5th Div. Comp. Stat. 1887; re-en. Sec. 921, Pol. C. 1895; re-en. Sec. 328, Rev. C. 1907; amd. Sec. 7, Ch. 103, L. 1909; re-en. Sec. 397, R.C.M. 1921; re-en. Sec. 397, R.C.M. 1935; amd. Sec. 12, Ch. 117, L. 1961; R.C.M. 1947, 56-113.

1-5-409 through 1-5-414 reserved.

1-5-415. Statewide jurisdiction. The jurisdiction of notaries public shall be coextensive with the boundaries of the state, irrespective of their place of residence within the state. Every person receiving a commission as notary public shall have jurisdiction to perform his official duties and acts in every county of the state of Montana.

History: Ap. p. Sec. 910, Pol. C. 1895; re-en. Sec. 317, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1909; re-en. Sec. 385, R.C.M. 1921; Cal. Pol. C. Sec. 791; re-en. Sec. 385, R.C.M. 1935; Sec. 56-101,

R.C.M. 1947; Ap. p. Sec. 4, Ch. 103, L. 1909; re-en. Sec. 389, R.C.M. 1921; re-en. Sec. 389, R.C.M. 1935; Sec. 56-105, R.C.M. 1947; R.C.M. 1947, 56-101(part), 56-105(part).

1-5-416. Powers and duties. A notary public shall:

(1) take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of such proof or acknowledgment, endorsed on or attached to the instrument;

(2) take depositions and affidavits and administer oaths and affirmations in all matters incident to the duties of his office or to be used before any court, judge, officer, or board in this state;

(3) whenever requested and upon payment of his fees therefor, make and give a certified copy of any record in his office;

(4) provide and keep an official seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal", with the surname of the notary and at least the initials of his given name;

(5) authenticate with his official seal all official acts. Whenever the notary public signs his name officially as a notary public, he shall add to his signature the words "Notary Public for the State of Montana, residing at.... (stating the name of his post office)" and shall endorse upon the instrument the date of the expiration of his commission.

History: En. Sec. 913, Pol. C. 1895; re-en. Sec. 320, Rev. C. 1907; amd. Sec. 3, Ch. 103, L. 1909; re-en. Sec. 388, R.C.M. 1921; Cal. Pol. C. Sec. 794; re-en. Sec. 388, R.C.M. 1935; R.C.M. 1947, 56-104; amd. Sec. 8, Ch. 119, L. 1979; amd. Sec. 1, Ch. 225, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (1) relating to the duty to demand acceptance and payment of bills of exchange.

1-5-417. Authority of notaries who are stockholders, officers, or employees of corporations. It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonaccceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such bank or other corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee where such notary is a party to such instrument, either individually or as a representative of such bank or other corporation, or to protest any negotiable instrument owned or held for collection by such bank or other corporation where such notary is individually a party to such instrument.

History: En. Sec. 1, Ch. 77, L. 1909; re-en. Sec. 390, R.C.M. 1921; re-en. Sec. 390, R.C.M. 1935; R.C.M. 1947, 56-106.

1-5-418. Fees of notaries. Fees of notaries public are as follows:

(1) for drawing an affidavit, deposition, or other paper for which provision is not herein made, $3.50 per page;

(2) for taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first signature, $1;

(3) for each additional signature, 50 cents;

(4) for administering an oath or affirmation, $1;

(5) for certifying an affidavit, with or without seal, including oath, $1.

History: En. Sec. 1, Ch. 44, L. 1907; Sec. 3165, Rev. C. 1907; re-en. Sec. 4914, R.C.M. 1921; re-en. Sec. 4914, R.C.M. 1935; R.C.M. 1947, 25-112; amd. Sec. 2, Ch. 225, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsections (1)(a), (1)(b), and (2), relating to nonpayment protests; redesignated all subsections to conform to the deletion of former subsection (2); substituted "$3.50 per page" for "for each folio, unless otherwise prescribed, 20 cents" in (1); increased the amount in (4) from 25 cents to $1; increased the amount in (5) from 50 cents to $1.

1-5-419. Transfer of records upon termination of office. It is the duty of every notary public on his resignation or removal from office or at the expiration of his term and, in case of his death, of his legal representative to forthwith deposit all the records kept by him in the office of the county clerk of the county in which he was resident. On failure to do so, the person so offending is liable to damages to any person injured thereby.

History: En. Sec. 915, Pol. C. 1895; re-en. Sec. 322, Rev. C. 1907; re-en. Sec. 392, R.C.M. 1921; Cal. Pol. C. Sec. 796; re-en. Sec. 392, R.C.M. 1935; R.C.M. 1947, 56-108.

1-5-420. Powers and duties of clerk with whom records deposited. It is the duty of each clerk aforesaid to receive and safely keep all such records and papers of the notary in the case above named and to give attested copies of them under his seal, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

History: En. Sec. 916, Pol. C. 1895; re-en. Sec. 323, Rev. C. 1907; re-en. Sec. 393, R.C.M. 1921; Cal Pol. C. Sec. 797; re-en. Sec. 393, R.C.M. 1935; R.C.M. 1947, 56-109.

Part 5

Commissioners of Deeds
(Sections 1-5-501 through 1-5-507 repealed. Sec. 14, Ch. 119, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

1-5-501. En. Sec. 940, Pol. C. 1895; re-en. Sec. 333, Rev. C. 1907; re-en. Sec. 402, R.C.M. 1921; Cal. Pol. C. Secs. 811-817; re-en. Sec. 402, R.C.M. 1935; R.C.M. 1947, 56-201.

1-5-502. En. Sec. 945, Pol. C. 1895; re-en. Sec. 338, Rev. C. 1907; re-en. Sec. 407, R.C.M. 1921; re-en. Sec. 407, R.C.M. 1935; R.C.M. 1947, 56-206.

1-5-503. En. Sec. 946, Pol. C. 1895; re-en. Sec. 339, Rev. C. 1907; re-en. Sec. 408, R.C.M. 1921; re-en. Sec. 408, R.C.M. 1935; R.C.M. 1947, 56-207.

1-5-504. En. Sec. 943, Pol. C. 1895; re-en. Sec. 336, Rev. C. 1907; re-en. Sec. 405, R.C.M. 1921; re-en. Sec. 405, R.C.M. 1935; R.C.M. 1947, 56-204.

1-5-505. En. Sec. 941, Pol. C. 1895; re-en. Sec. 334, Rev. C. 1907; re-en. Sec. 403, R.C.M. 1921; re-en. Sec. 403, R.C.M. 1935; R.C.M. 1947, 56-202.

1-5-506. En. Sec. 942, Pol. C. 1895; re-en. Sec. 335, Rev. C. 1907; re-en. Sec. 404, R.C.M. 1921; re-en. Sec. 404, R.C.M. 1935; R.C.M. 1947, 56-203.

1-5-507. En. Sec. 944, Pol. C. 1895; re-en. Sec. 337, Rev. C. 1907; re-en. Sec. 406, R.C.M. 1921; re-en. Sec. 406, R.C.M. 1935; R.C.M. 1947, 56-205.

CHAPTER 6

OATHS

Part 1 — General Provisions

Section
1-6-101. Officers who may administer oaths.
1-6-102. Form of ordinary oath.
1-6-103. Variation of oath to suit witness's belief.
1-6-104. Affirmation or declaration in lieu of oath.

Part 1

General Provisions

1-6-101. Officers who may administer oaths. Every court, judge, clerk of any court, justice, notary public, and officer or person authorized to take testimony in any action or proceeding or to decide upon evidence has power to administer oaths or affirmations.

History: En. Sec. 360, p. 118, Bannack Stat.; re-en. Sec. 418, p. 219, L. 1867; re-en. Sec. 492, p. 135, Cod. Stat. 1871; amd. Sec. 671, p. 214, L. 1877; re-en. Sec. 671, 1st Div. Rev. Stat. 1879; re-en. Sec. 693, 1st Div. Comp. Stat. 1887; amd. Sec. 3430, C. Civ. Proc. 1895; re-en. Sec. 8049, Rev. C. 1907; re-en. Sec. 10693, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2093; re-en. Sec. 10693, R.C.M. 1935; R.C.M. 1947, 93-2401-1.

1-6-102. Form of ordinary oath. An oath or affirmation in an action or proceeding may be administered as follows: the person who swears or affirms expressing his assent when addressed in the following form, "You do solemnly swear (or affirm, as the case may be) that the evidence you shall give in this issue (or matter), pending between .... and ...., shall be the truth, the whole truth, and nothing but the truth, so help you God".

History: En. Sec. 3431, C. Civ. Proc. 1895; re-en. Sec. 8050, Rev. C. 1907; re-en. Sec. 10694, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2094; re-en. Sec. 10694, R.C.M. 1935; R.C.M. 1947, 93-2401-2.

1-6-103. Variation of oath to suit witness's belief. The court shall vary the mode of swearing or affirming to accord with the witness's beliefs whenever it is satisfied that the witness has a distinct mode of swearing or affirming.

History: En. Sec. 3432, C. Civ. Proc. 1895; re-en. Sec. 8051, Rev. C. 1907; re-en. Sec. 10695, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2095; re-en. Sec. 10695, R.C.M. 1935; R.C.M. 1947, 93-2401-3; amd. Sec. 9, Ch. 119, L. 1979.

1-6-104. Affirmation or declaration in lieu of oath. Any person who desires it may, at his option, instead of taking an oath make his solemn affirmation or declaration by assenting when addressed in the following form: "You do solemnly affirm (or declare), etc.", as in 1-6-102.

History: En. Sec. 362, p. 118, Bannack Stat.; en. Sec. 420, p. 219, L. 1867; re-en. Sec. 494, p. 135, Cod. Stat. 1871; amd. Sec. 673, p. 215, L. 1877; re-en. Sec. 673, 1st Div. Rev. Stat. 1879; re-en. Sec. 695, 1st Div. Comp. Stat. 1887; amd. Sec. 3434, C. Civ. Proc. 1895; re-en. Sec. 8053, Rev. C. 1907; re-en. Sec. 10697, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2097; re-en. Sec. 10697, R.C.M. 1935; R.C.M. 1947, 93-2401-5.

CHAPTERS 7 THROUGH 10

RESERVED.

CHAPTER 11

PUBLICATION AND UPDATING OF THE CODE CODE COMMISSIONER

Part 1 — General Provisions

Section
1-11-101. Definitions.
1-11-102. Name — citation.
1-11-103. Effect of Montana Code Annotated.

Part 2 — Code Commissioner

1-11-201. Office of code commissioner created.
1-11-202. Qualifications of code commissioner.
1-11-203. Supervision by legislative council.
1-11-204. Duties of code commissioner.

Part 3 — Publication

1-11-301. Publication and sale of Montana Code Annotated — free distribution.
1-11-302. Updates of Montana Code Annotated.
1-11-303. Authority to issue ancillary publications.
1-11-304. Copyrights.

Part 1

General Provisions

1-11-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Code" or "codes" means the Revised Codes of Montana, 1947, the pocket supplements thereto, and the replacement volumes.

(2) "Recodify" means to compile, arrange, rearrange, and prepare for publication. It includes, without changing the meaning, effect, or intent of any law:

(a) correcting or changing punctuation, capitalization, spelling, grammatical construction, and numbering as required by uniform literary and bill drafting practice;

(b) substituting the appropriate new code division reference for reference to a section of, to a part of, or to an entire "act";

(c) substituting calendar date for "effective date", "hereafter", and similar terms;

(d) creating new titles, chapters, parts, sections, or other divisions of the code;

(e) changing or inserting language made necessary because of rearrangement;

(f) eliminating redundant words;

(g) when given direction or authority by another statute, correcting inaccurate or obsolete references to:

(i) titles of officers or agencies, such as those changed by executive reorganization statutes;

(ii) other code sections, such as those which have been repealed or repealed and replaced;

(h) changing inaccurate terminology to comply with statutory definitions or short form amendments, such as those found in 1-1-202(7) or 3-11-101(2);

(i) changing or creating section captions (catchlines) to clearly reflect the content of the section unless the section captions are specifically and expressly adopted as part of the law by the legislature.

History: En. 12-501 by Sec. 1, Ch. 419, L. 1975; amd. Sec. 1, Ch. 1, L. 1977; R.C.M. 1947, 12-501; amd. Sec. 1, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (2)(i), deleted "whether originally written by the legislature or by the code publisher" at the beginning and inserted "unless . . . legislature" at the end.

1-11-102. Name — citation. The recodified laws shall be known as the "Montana Code Annotated" and may be cited as "MCA".

History: En. 12-504 by Sec. 4, Ch. 419, L. 1975; R.C.M. 1947, 12-504; amd. Sec. 10, Ch. 119, L. 1979.

1-11-103. Effect of Montana Code Annotated. (1) The Montana Code Annotated shall be enacted as a reenactment of the Revised Codes of Montana, 1947, and the supplements thereto.

(2) The enactment of the Montana Code Annotated shall not:

(a) revive a law repealed or superseded before the effective date of the Montana Code Annotated;

(b) affect an act done, right accrued, or obligation incurred or imposed by law prior to the effective date of the Montana Code Annotated;

(c) affect any action, suit, or proceeding pending on such effective date;

(d) repeal statutes of a nongeneral, nonpermanent nature such as severability, construction, validating, repealing, or similar statutes omitted from the Montana Code Annotated.

(3) The Montana Code Annotated shall be given effect as a continuation of the Revised Codes of Montana and not as a new enactment. A defect in title of any act set out in prior laws and reenacted by the Montana Code Annotated is cured by such enactment.

(4) No implication or presumption of legislative construction is to be drawn from the classification or arrangement of the Montana Code Annotated.

(5) Unless specifically and expressly adopted as part of the law by the legislature, annotations, code commissioner notes, catchlines, or other editorial material included in the Montana Code Annotated may not be construed as part of the legislative text but are only for the purpose of convenience, orderly arrangement, and information.

(6) After enactment, the Montana Code Annotated, including all subsequent replacement volumes, shall be prima facie the official laws of Montana.

In case of any inconsistency in meaning arising through omission or otherwise between the provisions of the Montana Code Annotated and the corresponding portion of the official enrolled bill on file with the secretary of state, effect shall be given to the official enrolled bill.

History: En. 12-506 by Sec. 6, Ch. 419, L. 1975; amd. Sec. 4, Ch. 1, L. 1977; R.C.M. 1947, 12-506; amd. Sec. 11, Ch. 119, L. 1979; amd. Sec. 2, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (5), inserted "and expressly" before "adopted" and substituted "part of the law" for "such".

Part 2

Code Commissioner

1-11-201. Office of code commissioner created. There is created within the legislative council the office of code commissioner.

History: En. 12-502 by Sec. 2, Ch. 419, L. 1975; R.C.M. 1947, 12-502; amd. Sec. 1, Ch. 159, L. 1979.

1-11-202. Qualifications of code commissioner. To be eligible to be code commissioner, a person must be licensed to practice law in Montana for at least 5 years and demonstrate a knowledge of code arranging and recodification procedures.

History: En. 12-503 by Sec. 3, Ch. 419, L. 1975; R.C.M. 1947, 12-503.

1-11-203. Supervision by legislative council. The code commissioner is subject to the general supervision and policy of the legislative council.

History: En. 12-505 by Sec. 5, Ch. 419, L. 1975; amd. Sec. 2, Ch. 1, L. 1977; R.C.M. 1947, 12-505(1).

1-11-204. Duties of code commissioner. (1) Prior to January 1, 1979, the code commissioner shall recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare them for publication.

(2) Prior to January 1, 1979, the commissioner shall prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner", together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report shall explain and indicate, in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change.

(3) Prior to the November 1 immediately preceding each regular legislative session, the commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation which will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate any duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(4) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) Statutory history of each code section;

(b) Annotations of state and federal court decisions relating to the subject matter of the code;

(c) Such editorial notes, cross-references, and other matter as the commissioner considers desirable or advantageous;

(d) The Declaration of Independence;

(e) The Constitution of the United States of America and amendments thereto;

(f) Acts of congress relating to the authentication of laws and records;

(g) The Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments thereto;

(j) The Ordinances relating to federal relations and elections;

(k) Rules of civil, criminal, and appellate procedure and such other rules of procedure as the Montana supreme court may adopt; and

(l) A complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(5) After publication of the Montana Code Annotated, the code commissioner shall:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(b) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and submit to each legislature a report certified as the "Official Report of the Montana Code Commissioner—(year)" which indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last such report.

(6) From time to time the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures.

History: En. 12-505 by Sec. 5, Ch. 419, L. 1975; amd. Sec. 2, Ch. 1, L. 1977; R.C.M. 1947, 12-505(2) thru (7); amd. Sec. 12, Ch. 119, L. 1979.

Part 3

Publication

1-11-301. Publication and sale of Montana Code Annotated — free distribution. (1) The legislative council with the advice of the code commissioner shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as herein provided.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications thereto may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public shall be fixed by the legislative council but may not exceed the cost price plus 20%. All revenues generated from the sale of the Montana Code Annotated or ancillary publications shall be deposited in the revolving fund, from which fund appropriations may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state or local governmental agencies that are supported by public funds shall be for the cost price of the sets.

(5) (a) The Montana Code Annotated and supplements and other subsequent and ancillary publications except annotations shall be provided at no cost to the following:

(i) each library designated as a depository library under 22-1-214, one copy;

(ii) each library designated as a federation headquarters library under 22-1-402, one copy.

(b) The state law library in Helena shall be provided with four copies of the Montana Code Annotated and supplements including annotations and other subsequent and ancillary publications.

(c) The legislative council shall include in the cost price of the code the cost of providing the copies under this subsection.

History: En. 12-507 by Sec. 7, Ch. 419, L. 1975; amd. Sec. 5, Ch. 1, L. 1977; R.C.M. 1947, 12-507; amd. Sec. 3, Ch. 1, L. 1979; amd. Sec. 4, Ch. 265, L. 1979; amd. Sec. 1, Ch. 91, L. 1981.

Compiler's Comments
1981 Amendment: Added subsection (5).

Cross-References
Codes for legislators, 5-11-209.

1-11-302. Updates of Montana Code Annotated. (1) The publication of updates to the Montana Code Annotated may be as a cumulative supplement or replacement volume or in any other format approved by the legislative council.

(2) The supplements or replacements shall be certified, published, copyrighted, and deposited with the secretary of state. The supplements and replacements become effective on the date deposited with and certified to the secretary of state.

History: En. 12-510 by Sec. 10, Ch. 419, L. 1975; amd. Sec. 7, Ch. 1, L. 1977; R.C.M. 1947, 12-510(1), (2); amd. Sec. 13, Ch. 119, L. 1979.

1-11-303. Authority to issue ancillary publications. The legislative council may issue such supplementary and ancillary publications as it considers necessary or desirable in aid of the general use and purposes of the Montana Code Annotated and the supplements or replacements thereto.

History: En. 12-510 by Sec. 10, Ch. 419, L. 1975; amd. Sec. 7, Ch. 1, L. 1977; R.C.M. 1947, 12-510(3).

1-11-304. Copyrights. The Montana Code Annotated, supplements, or other publications ancillary thereto, as published, shall be the sole property of the state of Montana and shall be copyrighted for and in behalf of the state of Montana by the secretary of state.

History: En. 12-508 by Sec. 8, Ch. 419, L. 1975; R.C.M. 1947, 12-508.

CHAPTER 12

COMMISSION ON UNIFORM STATE LAWS

Part 1 — General Provisions

Section
1-12-101. Appointment, composition, term of office.
1-12-102. Vacancies.
1-12-103. Meetings and organization.
1-12-104. Duties of commissioners.

Part 1

General Provisions

1-12-101. Appointment, composition, term of office. A commission is hereby created to be known as the commission on uniform state laws which shall consist of three recognized members of the bar or members of the faculty of the law school of the state university of Montana, who shall be appointed by the governor for terms of 4 years each or until their successors are appointed, and in addition thereto, any residents of this state who because of long service in the cause of the uniformity of state legislation shall have been elected life members of the national conference of commissioners on uniform state laws.

History: En. Sec. 1, Ch. 175, L. 1945; R.C.M. 1947, 12-401.

1-12-102. Vacancies. If an appointed commissioner dies, resigns, or fails or refuses to serve, his office becomes vacant. The governor shall appoint a qualified person to fill the vacancy for the unexpired term.

History: En. Sec. 2, Ch. 175, L. 1945; amd. Sec. 2, Ch. 309, L. 1977; R.C.M. 1947, 12-402.

1-12-103. Meetings and organization. The commissioners shall meet at least once in 2 years and shall organize by the election of one of their number as chairman and another as secretary, who shall hold their respective offices for a term of 2 years and until their successors are elected.

History: En. Sec. 3, Ch. 175, L. 1945; R.C.M. 1947, 12-403.

1-12-104. Duties of commissioners. (1) Each commissioner shall attend the meeting of the national conference of commissioners on uniform state laws and, both in and out of such national conference, shall do all in his power to promote uniformity in state laws upon all subjects where uniformity may be deemed desirable and practicable.

(2) Said commission shall report as provided in 2-7-102.

(3) It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

History: **En. Sec. 4, Ch. 175, L. 1945; amd. Sec. 8, Ch. 93, L. 1969; R.C.M. 1947, 12-404.**

TITLE 2

GOVERNMENT STRUCTURE AND ADMINISTRATION

Ch.
1. Sovereignty and Jurisdiction.
2. Standards of Conduct.
3. Public Participation in Governmental Operations.
4. Administrative Procedure Act.
Chapter 5 reserved.
6. Public Records.
7. Reports and Audits.
8. Legislative Review.
9. Liability Exposure and Insurance Coverage.
Chapters 10 through 14 reserved.
15. Executive Branch Officers and Agencies.
16. Public Officers.
17. Property Management.
18. State Employee Classification, Compensation, and Benefits.
19. Termination of State Agencies.

CHAPTER 1

SOVEREIGNTY AND JURISDICTION

Part 1 — Sovereignty and Jurisdiction of the State

Section
2-1-101. Sovereignty and style of process.
2-1-102. Sovereignty and jurisdiction of the state.
2-1-103. Repealed. Sec. 32, Ch. 184, L. 1979.

Part 2 — Cession and Retrocession of Jurisdiction

2-1-201. Jurisdiction in federal enclaves.
2-1-202. Jurisdiction over lands purchased by United States — reservation of rights to state.
2-1-203. Withdrawal of offer to cede legislative jurisdiction.
2-1-204. Military reservations — service of process.
2-1-205. Glacier National Park.
2-1-206. Cession and retrocession of jurisdiction over Blackfeet highway.
2-1-207. Yellowstone National Park.
2-1-208. Withdrawal of consent to purchase additional state lands for national park.
2-1-209. Concurrent jurisdiction over Fort Peck Dam ceded to United States — reservation of rights to state.
2-1-210. Consent to purchase of lands by United States for national forest purposes — jurisdiction.
2-1-211. Consent to purchase lands for migratory bird reservations — jurisdiction.
2-1-212. Acceptance of concurrent jurisdiction over veterans administration center.
2-1-213. Acceptance of concurrent jurisdiction over Big Hole national battlefield.
2-1-214. Concurrent jurisdiction of the United States over certain lands dedicated to national park purposes.
2-1-215. Acceptance of jurisdiction over federal lands.
2-1-216. Filing of acceptance of jurisdiction over federal lands.

Part 3 — Jurisdiction on Indian Lands

2-1-301. Assumption of criminal jurisdiction of Flathead Indian country.

2-1-302. Resolution of Indian tribes requesting state jurisdiction — governor's proclamation — consent of county commissioners.
2-1-303. Date of assumption of jurisdiction — application of state law in Indian country.
2-1-304. Rights, privileges, and immunities reserved to Indians.
2-1-305. Indian culture protected.
2-1-306. Withdrawal of consent to state jurisdiction.
2-1-307. Service of process.

Part 1

Sovereignty and Jurisdiction of the State

2-1-101. Sovereignty and style of process. The sovereignty of the state resides in the people thereof, but the style of all process must be "The State of Montana", and all prosecutions must be conducted in the name of the state.

History: En. Sec. 30, Pol. C. 1895; re-en. Sec. 20, Rev. C. 1907; re-en. Sec. 19, R.C.M. 1921; Cal. Pol. C. Sec. 30; re-en. Sec. 19, R.C.M. 1935; R.C.M. 1947, 83-101.

2-1-102. Sovereignty and jurisdiction of the state. The sovereignty and jurisdiction of this state extend to all places within its boundaries as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States.

History: En. Sec. 40, Pol. C. 1895; re-en. Sec. 21, Rev. C. 1907; re-en. Sec. 20, R.C.M. 1921; Cal. Pol. C. Sec. 33; re-en. Sec. 20, R.C.M. 1935; R.C.M. 1947, 83-102(part).

2-1-103. Repealed. Sec. 32, Ch. 184, L. 1979.

History: En. Sec. 50, Pol. C. 1895; re-en. Sec. 25, Rev. C. 1907; re-en. Sec. 26, R.C.M. 1921; Cal. Pol. C. Sec. 37; re-en. Sec. 26, R.C.M. 1935; R.C.M. 1947, 83-201.

Part 2

Cession and Retrocession of Jurisdiction

2-1-201. Jurisdiction in federal enclaves. The extent of the jurisdiction of this state over places that have been or may be ceded to, purchased, or condemned by the United States is qualified by the terms of such cession or the laws under which such purchase or condemnation has been or may be made.

History: En. Sec. 40, Pol. C. 1895; re-en. Sec. 21, Rev. C. 1907; re-en. Sec. 20, R.C.M. 1921; Cal. Pol. C. Sec. 33; re-en. Sec. 20, R.C.M. 1935; R.C.M. 1947, 83-102(part).

2-1-202. Jurisdiction over lands purchased by United States — reservation of rights to state. Pursuant to Article I, section 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given and exclusive jurisdiction ceded to the United States over and with respect to any lands within the limits of this state which shall be acquired by the complete purchase by the United States for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as said lands are held and occupied by the United States for said purposes; reserving, however, to this state the right to serve and execute civil or criminal process lawfully issued by the courts of the state within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or without such territory; and reserving further to the said state the right to tax persons and corporations, their franchises and property within said territory; and reserving further to the state and its inhabitants and citizens the right to fish and hunt and the right of access, ingress, and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state of Montana jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of health and environmental sciences and the enforcement of any regulations promulgated by said departments in accordance with the laws of the state of Montana; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, shall file an accurate map or plat and description by metes and bounds of said lands in the office of the county clerk and recorder of the county in which said lands are situated. If such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city. The filing of such map as herein provided shall constitute acceptance of the jurisdiction by the United States as herein ceded.

History: En. Sec. 1, p. 52, L. 1893; re-en. Sec. 43, Pol. C. 1895; re-en. Sec. 24, Rev. C. 1907; re-en. Sec. 25, R.C.M. 1921; re-en. Sec. 25, R.C.M. 1935; amd. Sec. 1, Ch. 155, L. 1939; amd. Sec. 102, Ch. 349, L. 1974; R.C.M. 1947, 83-108(part).

2-1-203. Withdrawal of offer to cede legislative jurisdiction. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitled: "An Act Giving the Consent of the State of Montana to the Purchase, by the United States, of Land in any City or Town of the State, for the Purpose of United States Courthouse, Post Office and for Other Purposes" approved March 5, 1891, as amended by the act of the third legislative assembly of 1893, an act entitled: "An Act Giving the Consent of the State of Montana to the Purchase by the United States of Land in any City or Town of the State for the Purpose of United States Courthouse, Post Offices and for Other Like Purposes", approved March 9, 1893, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts.

History: En. Sec. 1, p. 52, L. 1893; re-en. Sec. 43, Pol. C. 1895; re-en. Sec. 24, Rev. C. 1907; re-en. Sec. 25, R.C.M. 1921; re-en. Sec. 25, R.C.M. 1935; amd. Sec. 1, Ch. 155, L. 1939; amd. Sec. 102, Ch. 349, L. 1974; R.C.M. 1947, 83-108(part).

2-1-204. Military reservations — service of process. (1) Authority is granted to and acknowledged in the United States to exercise exclusive legislation as provided by the constitution of the United States over the military reservation of Fort Missoula as established by law to the same extent and with the same effect as if the reservation had been purchased by the

United States by consent of the legislative assembly of the state of Montana so long as it remains a military reservation.

(2) All legal process of the state, both civil and criminal, may be served upon persons and property found within the reservation in all cases where the United States does not have exclusive jurisdiction.

History: En. Sec. 41, Pol. C. 1895; re-en. Sec. 22, Rev. C. 1907; re-en. Sec. 21, R.C.M. 1921; re-en. Sec. 21, R.C.M. 1935; R.C.M. 1947, 83-103(part); amd. Sec. 1, Ch. 184, L. 1979.

2-1-205. Glacier National Park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all the territory which is now or may hereafter be included in that tract of land in the state of Montana set aside by the act of congress, approved May 11, 1910, for the purposes of a national park, and known and designated as "The Glacier National Park", saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid park in any suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside of said park; and saving, further, to the state the right to tax persons and corporations, their franchises and property on the lands included in said park; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of this state that it assumes police or military jurisdiction over said park.

History: En. Sec. 1, Ch. 33, L. 1911; re-en. Sec. 22, R.C.M. 1921; re-en. Sec. 22, R.C.M. 1935; R.C.M. 1947, 83-104.

2-1-206. Cession and retrocession of jurisdiction over Blackfeet highway. (1) Concurrent police jurisdiction shall be and the same is hereby granted to the United States of America over and within all the territory which is now or may hereafter be included in the rights-of-way of the Blackfeet highway, including the highway itself throughout its length between Glacier Park Station and the Canadian boundary line and the rights-of-way of the highways on the Blackfeet Indian reservation connecting the Blackfeet highway with the Glacier Park road system, including the highways themselves.

(2) Jurisdiction herein granted shall not vest until the United States of America, through the proper officers, notifies the governor of the state of Montana that it assumes concurrent police jurisidiction over the said rights-of-way and the said highways.

(3) The provisions of the act of congress of March 15, 1958, P.L. 85-343, 85th congress, S.1828, 72 Stat. 35-36, to retrocede to the state of Montana such concurrent police jurisdiction as has been ceded to the United States of America over the rights-of-way of the Blackfeet highway, including the highway itself, and over the rights-of-way of its connection with the Glacier National Park road system on the Blackfeet Indian reservation, including the highways themselves, are hereby accepted by the state of Montana as required by section 2 of said act of March 15, 1958 (72 Stat. 35-36), with the understanding on the part of the state of Montana that the laws and regulations of the United States of America pertaining to Glacier National Park shall cease to apply to the territory of said rights-of-way and highways as in said act of the congress made and provided.

History: (1)En. Sec. 1, Ch. 37, L. 1929; re-en. Sec. 26.1, R.C.M. 1935; Sec. 83-111, R.C.M. 1947; (2)En. Sec. 2, Ch. 37, L. 1929; re-en. Sec. 26.2, R.C.M. 1935; Sec. 83-112, R.C.M. 1947; (3)En. Sec. 1, Ch. 157, L. 1963; Sec. 83-104.1, R.C.M. 1947; R.C.M. 1947, 83-104.1, 83-111, 83-112.

2-1-207. Yellowstone National Park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over all that part of territory situate in the state of Montana now embraced in the Yellowstone National Park, described as follows:

Beginning at the intersection of the east boundary of Yellowstone Park with the south boundary of Montana; thence north to the northeast corner of said park; thence west along the north boundary of the park to the northwest corner thereof; thence south along the west boundary of the park to the boundary between Montana and Idaho; thence easterly along that boundary to the west boundary of Wyoming; thence north along the west boundary of Wyoming to the northwest corner thereof; thence east along the boundary between Wyoming and Montana to the east boundary of said park, the place of beginning; containing an area of approximately 198 square miles, saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid described lands in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside the lands aforesaid, as long as the lands herein described are used for a national park and no other purposes.

History: En. Sec. 1, Ch. 112, L. 1917; re-en. Sec. 23, R.C.M. 1921; re-en. Sec. 23, R.C.M. 1935; amd. Sec. 1, Ch. 142, L. 1939; R.C.M. 1947, 83-106.

2-1-208. Withdrawal of consent to purchase additional state lands for national park. The consent of the state of Montana to the purchase by the United States of lands within the state of Montana to be embraced in Yellowstone National Park, other than the lands described in 2-1-207, and the consent of the state of Montana to the exercise of legislative jurisdiction by the United States over any additional lands to be embraced in said national park, as such consents may be contained in the act of the second legislative assembly of the state of Montana approved February 14, 1891, entitled, "An Act Ceding to the United States Jurisdiction Over Certain Lands" or any amendment of said act is hereby withdrawn, and exclusive legislative jurisdiction over all lands within the state of Montana that may be added hereafter to said national park shall be retained in the state of Montana.

History: En. Sec. 2, Ch. 142, L. 1939; R.C.M. 1947, 83-107.

2-1-209. Concurrent jurisdiction over Fort Peck Dam ceded to United States — reservation of rights to state. Consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction shall be and the same is hereby ceded to the United States over the Fort Peck Dam, the body of water or artificial lake created by such dam, the land under such body of water, and any lands now owned or which may be hereafter acquired by the United States and which shall touch such body of water, all such being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum, and Fergus, state of Montana, saving, however, to the said state the right to serve civil or criminal process within the limits of the territory over which jurisdiction is so ceded in any suits or prosecutions for or on account of rights obtained, obligations incurred, or crimes committed in said state, within or without said territory, and saving further to the said state the right to tax persons and corporations, their franchises and property within said territory, and reserving further to the said state and its inhabitants, citizens, and nonresidents the right to fish or hunt by boat or otherwise and the right of access, ingress, and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state jurisdiction in the enforcement of the state laws relating to the duties of the department of livestock and the department of health and environmental sciences and the enforcement of regulations promulgated by said departments in accordance with the laws of said state; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of the state of Montana that it assumes police or military jurisdiction over said territory.

History: **En. Sec. 1, Ch. 50, Ex. L. 1933; re-en. Sec. 25.1, R.C.M. 1935; amd. Sec. 103, Ch. 349, L. 1974; R.C.M. 1947, 83-109.**

2-1-210. Consent to purchase of lands by United States for national forest purposes — jurisdiction. (1) For the purpose of more effectively cooperating with the United States in the consolidating and rounding out of national forests in accordance with land-use plans and to facilitate the placing of forest lands other than national forest but which are integral with national forest lands under stable protection and administration to the end of public benefit and to help land owners, including the counties of the state in their discretion, to dispose of such of their lands as may be needed for national forest purposes, consent of the state of Montana is hereby given to the purchase by the United States of such lands in the state of Montana as in the opinion of the secretary of agriculture are needed for the purposes contemplated in section 6 of the act of congress approved March 1, 1911, commonly known as and called the Weeks law, and/or section 6 of the act of congress approved June 7, 1924, commonly known as the Clarke-McNary law, and/or any other provisions of any act of congress authorizing the purchase of land for national forest purposes.

(2) The jurisdiction of the state of Montana, both civil and criminal, over persons upon areas acquired under this section shall not be affected or changed by reason of their acquisition and administration by the United States, except so far as the punishment of offenses against the United States is concerned.

(3) The state shall have the same jurisdiction in respect to such lands as it has in respect to other national forest lands within the state.

(4) All property rights, easements, and benefits retained by or reserved to owners of lands purchased by the United States shall be subject to the tax laws of the state.

History: **En. Sec. 1, Ch. 118, L. 1935; re-en. Sec. 25.2, R.C.M. 1935; R.C.M. 1947, 83-110.**

2-1-211. Consent to purchase lands for migratory bird reservations — jurisdiction. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land, water, or land and water in the state of Montana as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the act of congress approved February 18, 1929, (as amended), entitled "An Act to More Effectively Meet the Obligations of the United States under the Migratory Bird Treaty with Great Britain by

Lessening the Dangers Threatening Migratory Game Birds from Drainage and Other Causes by the Acquisition of Areas of Land and of Water to Furnish in Perpetuity Reservations for the Adequate Protection of such Birds; and Authorizing Appropriations for the Establishment of such Areas, their Maintenance and Improvement and for Other Purposes", reserving, however, to the state of Montana full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

History: En. Sec. 1, Ch. 96, L. 1961; R.C.M. 1947, 83-113.

2-1-212. Acceptance of concurrent jurisdiction over veterans administration center. The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the veterans administration center, Fort Harrison, Montana, as ceded by Public Law 91-45; 83 Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana.

History: En. Sec. 1, Ch. 157, L. 1971; R.C.M. 1947, 83-114.

2-1-213. Acceptance of concurrent jurisdiction over Big Hole national battlefield. The state of Montana accepts the retrocession in Public Law 88-24, which was approved May 17, 1963, and made effective upon acceptance of the retrocession by the state of Montana of such jurisdiction as had been ceded by this state to the United States over the lands within the boundaries of the Big Hole national battlefield. This state recognizes the reservation in the United States of concurrent legislative jurisdiction over such lands.

History: En. 83-115 by Sec. 1, Ch. 125, L. 1977; R.C.M. 1947, 83-115.

2-1-214. Concurrent jurisdiction of the United States over certain lands dedicated to national park purposes. (1) Concurrent jurisdiction over crimes and offenses under the laws of the state is ceded to the United States over and within all the lands dedicated to national park purposes in the following tracts:

(a) Big Horn Canyon;
(b) Grant-Kohrs national historic site;
(c) Big Hole national battlefield; and
(d) Fort Union trading post.

(2) The concurrent jurisdiction ceded by subsection (1) is vested upon acceptance by the United States by and through its appropriate officials and shall continue so long as the lands within the designated areas are dedicated to park purposes.

History: En Sec. 1, Ch. 302, L. 1979.

2-1-215. Acceptance of jurisdiction over federal lands. The consent of the state is hereby given to the retrocession of jurisdiction, either partially or wholly, by the United States of America over lands owned by the United States of America within the boundaries of Montana that are used for national park purposes. The governor is authorized to accept for the state retrocession of jurisdiction.

History: En Sec. 2, Ch. 302, L. 1979.

2-1-216. Filing of acceptance of jurisdiction over federal lands. (1) When the state receives written notification from the authorized official or agent of the United States of America that the United States desires or is willing to relinquish to the state jurisdiction, or a portion thereof, over certain lands owned by the United States within Montana that are used for national park purposes, the governor may accept relinquishment.

(2) After acceptance and approval by the governor, retrocession of jurisdiction becomes effective upon filing of the original acceptance with the secretary of state of Montana.

History: **En Sec. 3, Ch. 302, L. 1979.**

Part 3

Jurisdiction on Indian Lands

Part Cross-References

State-tribal cooperative agreements, Title 18, ch. 11.

2-1-301. Assumption of criminal jurisdiction of Flathead Indian country. The state of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd congress, 1st session).

History: **En. Sec. 1, Ch. 81, L. 1963; R.C.M. 1947, 83-801.**

2-1-302. Resolution of Indian tribes requesting state jurisdiction — governor's proclamation — consent of county commissioners. (1) Whenever the governor of this state receives from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes or any other community, band, or group of Indians in this state, a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction, or both, of the state to the extent authorized by federal law and regulation, he shall issue within 60 days a proclamation to the effect that such jurisdiction applies to those Indians and their territory or reservation in accordance with the provisions of this part.

(2) The governor may not issue the proclamation until the resolution has been approved in the manner provided for by the charter, constitution, or other fundamental law of the tribe or tribes, if said document provides for such approval, and there has been first obtained the consent of the board of county commissioners of each county which encompasses any portion of the reservation of such tribe or tribes.

History: **En. Sec. 2, Ch. 81, L. 1963; R.C.M. 1947, 83-802; amd. Sec. 2, Ch. 184, L. 1979.**

2-1-303. Date of assumption of jurisdiction — application of state law in Indian country. Sixty days from the date of issuance of the proclamation of the governor as provided for by 2-1-302, the state of Montana shall assume jurisdiction over offenses committed by or against Indians in the lands prescribed in the proclamation to the same extent that this state has jurisdiction over offenses committed elsewhere within this state. The criminal and/or civil laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.

History: **En. Sec. 3, Ch. 81, L. 1963; R.C.M. 1947, 83-803.**

2-1-304. Rights, privileges, and immunities reserved to Indians. Nothing in this part shall:

(1) authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States;

(2) authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto;

(3) confer jurisdiction upon the state of Montana to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or

(4) deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to hunting, trapping, fishing, or the control, licensing, or regulation thereof.

History: **En. Sec. 4, Ch. 81, L. 1963; R.C.M. 1947, 83-804.**

2-1-305. Indian culture protected. Nothing in this part shall deprive the Indian tribe, band, or community from carrying on its age-old tribal dances, feasting, or customary Indian celebrations or in any way try to destroy the Indian culture.

History: **En. Sec. 5, Ch. 81, L. 1963; R.C.M. 1947, 83-805.**

2-1-306. Withdrawal of consent to state jurisdiction. Any Indian tribe, community, band, or group of Indians that may consent to come within the provisions of this part may within 2 years from the date of the governor's proclamation withdraw their consent to be subject to the criminal and/or civil jurisdiction of the state of Montana, by appropriate resolution, and within 60 days after receipt of such resolution, the governor shall issue a proclamation to that effect.

History: **En. Sec. 6, Ch. 81, L. 1963; R.C.M. 1947, 83-806.**

2-1-307. Service of process. All legal process of the state, both civil and criminal, may be served upon persons and property found on any Indian reservation in all cases where the United States has not exclusive jurisdiction.

History: **En. Sec. 41, Pol. C. 1895; re-en. Sec. 22, Rev. C. 1907; re-en. Sec. 21, R.C.M. 1921; re-en. Sec. 21, R.C.M. 1935; R.C.M. 1947, 83-103(part).**

CHAPTER 2

STANDARDS OF CONDUCT

Part 1 — Code of Ethics

Section

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Part 1

Code of Ethics

2-2-101. Statement of purpose. The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

History: En. 59-1701 by Sec. 1, Ch. 569, L. 1977; R.C.M. 1947, 59-1701.

2-2-102. Definitions. As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of the state or any subdivision thereof or member of the judiciary, including a member of a board, commission, or committee except a legislator and an employee under contract to the state.

(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real or personal property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(6) "Public officer" includes any state officer except a legislator or member of the judiciary or any elected officer of any subdivision of the state.

(7) "State agency" includes the state; the legislature and its committees; all executive departments, boards, commissions, committees, bureaus, and offices; the university system; and all independent commissions and other establishments of the state government except the courts.

(8) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102.

History: En. 59-1702 by Sec. 2, Ch. 569, L. 1977; R.C.M. 1947, 59-1702.

2-2-103. Public trust. (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under 72-20-203(2), and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty.

History: En. 59-1703 by Sec. 3, Ch. 569, L. 1977; R.C.M. 1947, 59-1703.

2-2-104. Rules of conduct for all public officers, legislators, and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty. A public officer, legislator, or employee may not:

(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

(ii) which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

History: En. 59-1704 by Sec. 4, Ch. 569, L. 1977; R.C.M. 1947, 59-1704.

2-2-105. Ethical principles for public officers and employees. (1) The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.

(2) A public officer or employee should not acquire an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by his agency.

(3) A public officer or employee should not, within the months following the voluntary termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term or employment. These matters are rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

(4) A public officer or employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

History: En. 59-1709 by Sec. 9, Ch. 569, L. 1977; R.C.M. 1947, 59-1709.

2-2-106 through 2-2-110 reserved.

2-2-111. Rules of conduct for legislators. Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached his fiduciary duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except his official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for himself or solicit a contract for his services by the use of his office.

History: En. 59-1705 by Sec. 5, Ch. 569, L. 1977; R.C.M. 1947, 59-1705.

2-2-112. Ethical principles for legislators. (1) The principles in this section are intended only as guides to legislator conduct and do not constitute violations as such of the public trust of legislative office.

(2) When a legislator must take official action on a legislative matter as to which he has a conflict created by a personal or financial interest which would be directly and substantially affected by the legislative matter, he should consider disclosing or eliminating the interest creating the conflict or abstaining from the official action. In making his decision, he should further consider:

(a) whether the conflict impedes his independence of judgment;

(b) the effect of his participation on public confidence in the integrity of the legislature; and

(c) whether his participation is likely to have any significant effect on the disposition of the matter.

(3) A conflict situation does not arise from legislation affecting the entire membership of a class.

(4) If a legislator elects to disclose the interest creating the conflict, he shall do so as provided in the joint rules of the legislature.

History: **En. 59-1708 by Sec. 8, Ch. 569, L. 1977; R.C.M. 1947, 59-1708.**

2-2-113 through 2-2-120 reserved.

2-2-121. Rules of conduct for state officers and state employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A state officer or a state employee may not:

(a) use state time, facilities, or equipment for his private business purposes;

(b) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from his agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any state agency; or

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding subsection (2)(e) if his participation is necessary to the administration of a statute and if he complies with the voluntary disclosure procedures under 2-2-131.

(4) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless he is also a full-time state employee.

History: **En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706.**

2-2-122 through 2-2-124 reserved.

2-2-125. Rules of conduct for local government officers and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) An officer or employee of local government may not:

(a) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties; or

(b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A member of the governing body of a local government may perform an official act notwithstanding this section when his participation is necessary to obtain a quorum or otherwise enable the body to act, if he complies with the voluntary disclosure procedures under 2-2-131.

History: En. 59-1707 by Sec. 7, Ch. 569, L. 1977; R.C.M. 1947, 59-1707.

2-2-126 through 2-2-130 reserved.

2-2-131. Voluntary disclosure. A public officer or employee may, prior to acting in a manner which may impinge on his fiduciary duty, disclose the nature of his private interest which creates the conflict. He shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

History: En. 59-1710 by Sec. 10, Ch. 569, L. 1977; R.C.M. 1947, 59-1710.

2-2-132. Powers of the secretary of state. The secretary of state may:

(1) issue advisory opinions with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written;

(2) keep and permit reasonable public access to voluntary disclosure statements;

(3) make rules for the conduct of his affairs under this part.

History: En. 59-1711 by Sec. 11, Ch. 569, L. 1977; R.C.M. 1947, 59-1711.

Part 2

Proscribed Acts Related to Contracts and Claims

2-2-201. Public officers, employees, and former employees not to have interest in contracts. Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof must not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within 6 months following the termination of his employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which he was directly involved during his employment. In this section the term:

(1) "be interested in" does not include holding a minority interest in a corporation;

(2) "contract" does not include:

(a) contracts awarded to the lowest responsible bidder based on competitive bidding procedures;

(b) merchandise sold to the highest bidder at public auctions;

(c) investments or deposits in financial institutions which are in the business of loaning or receiving money;

(d) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It shall be presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

History: **En. Sec. 1020, Pol. C. 1895; re-en. Sec. 368, Rev. C. 1907; re-en. Sec. 444, R.C.M. 1921; Cal. Pol. C. Sec. 920; re-en. Sec. 444, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1973; R.C.M. 1947, 59-501; amd. Sec. 1, Ch. 377, L. 1979; amd. Sec. 1, Ch. 458, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (2)(d).

2-2-202. Public officers not to have interest in sales or purchases. State, county, town, township, and city officers must not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

History: **En. Sec. 1021, Pol. C. 1895; re-en. Sec. 369, Rev. C. 1907; re-en. Sec. 445, R.C.M. 1921; Cal. Pol. C. Sec. 921; re-en. Sec. 445, R.C.M. 1935; R.C.M. 1947, 59-502.**

2-2-203. Voidable contracts. Every contract made in violation of any of the provisions of 2-2-201 or 2-2-202 may be avoided at the instance of any party except the officer interested therein.

History: **En. Sec. 1022, Pol. C. 1895; re-en. Sec. 370, Rev. C. 1907; re-en. Sec. 446, R.C.M. 1921; Cal. Pol. C. Sec. 922; re-en. Sec. 446, R.C.M. 1935; R.C.M. 1947, 59-503.**

2-2-204. Dealings in warrants and other claims prohibited. The state officers, the several county, city, town, and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city, town, or township thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

History: **En. Sec. 1023, Pol. C. 1895; re-en. Sec. 371, Rev. C. 1907; re-en. Sec. 447, R.C.M. 1921; Cal. Pol. C. Sec. 923; re-en. Sec. 447, R.C.M. 1935; R.C.M. 1947, 59-504.**

2-2-205. Affidavit to be required by auditing officers. Every officer whose duty it is to audit and allow the accounts of other state, county, city, township, or town officers must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this part.

History: **En. Sec. 1024, Pol. C. 1895; re-en. Sec. 372, Rev. C. 1907; re-en. Sec. 448, R.C.M. 1921; Cal. Pol. C. Sec. 924; re-en. Sec. 448, R.C.M. 1935; R.C.M. 1947, 59-505.**

2-2-206. Officers not to pay illegal warrant. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, town, or township when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this part.

History: En. Sec. 1025, Pol. C. 1895; re-en. Sec. 373, Rev. C. 1907; re-en. Sec. 449, R.C.M. 1921; Cal. Pol. C. Sec. 925; re-en. Sec. 449, R.C.M. 1935; R.C.M. 1947, 59-506.

2-2-207. Settlements to be withheld on affidavit. (1) Every officer charged with the disbursement of public moneys who is informed by affidavit establishing probable cause that any officer whose account is about to be settled, audited, or paid by him has violated any of the provisions of this part must suspend such settlement or payment and cause such officer to be prosecuted for such violation by the county attorney of the county.

(2) In case there be judgment for the defendant upon such prosecution, the proper officer may proceed to settle, audit, or pay such account as if no such affidavit had been filed.

History: En. Sec. 1026, Pol. C. 1895; re-en. Sec. 374, Rev. C. 1907; re-en. Sec. 450, R.C.M. 1921; Cal. Pol. C. Sec. 926; re-en. Sec. 450, R.C.M. 1935; R.C.M. 1947, 59-507.

Part 3

Nepotism

2-2-301. Nepotism defined. Nepotism is the bestowal of political patronage by reason of relationship rather than of merit.

History: En. Sec. 1, Ch. 12, L. 1933; re-en. Sec. 456.1, R.C.M. 1935; R.C.M. 1947, 59-518.

2-2-302. Appointment of relative to office of trust or emolument unlawful. (1) It shall be unlawful for any person or any member of any board, bureau, or commission or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

(2) The provisions of this section and 2-2-303 shall not apply to sheriffs in the appointment of persons as cooks and/or attendants.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part).

2-2-303. Agreements to appoint relative to office unlawful. It shall further be unlawful for any person or any member of any board, bureau, or commission or employee of any department of this state or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus, or commissions or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree or by affinity within the second degree.

History: En. Sec. 2, Ch. 12, L. 1933; re-en. Sec. 456.2, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975; R.C.M. 1947, 59-519(part).

2-2-304. Penalty for violation of nepotism law. Any public officer or employee or any member of any board, bureau, or commission of this state or any political subdivision thereof who shall, by virtue of his office, have the right to make or appoint any person to render services to this state or any subdivision thereof and who shall make or appoint to such services or enter into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to him or them or connected with him or them by consanguinity within the fourth degree or by affinity within the second degree shall thereby be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not less than $50 or more than $1,000 or by imprisonment in the county jail for not less than 6 months or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 12, L. 1933; re-en. Sec. 456.3, R.C.M. 1935; R.C.M. 1947, 59-520.

CHAPTER 3

PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS

Part 1 — Notice and Opportunity to be Heard

Section
2-3-101. Legislative intent.
2-3-102. Definitions.
2-3-103. Public participation — governor to insure guidelines adopted.
2-3-104. Requirements for compliance with notice provisions.
2-3-105. Supplemental notice by radio or television.
2-3-106. Period for which copy retained.
2-3-107. Proof of publication by broadcast.
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2-3-111. Opportunity to submit views.
2-3-112. Exceptions.
2-3-113. Declaratory rulings to be published.
2-3-114. Enforcement.

Part 2 — Open Meetings

2-3-201. Legislative intent — liberal construction.
2-3-202. Meeting defined.
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2-3-211. Recording.
2-3-212. Minutes of meetings — public inspection.
2-3-213. Voidability.
Sections 2-3-214 through 2-3-220 reserved.
2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know.

Part 1

Notice and Opportunity to be Heard

2-3-101. Legislative intent. The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

History: **En. 82-4226 by Sec. 1, Ch. 491, L. 1975; R.C.M. 1947, 82-4226.**

2-3-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(b) declaratory rulings as to the applicability of any statutory provision or of any rule.

(3) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof.

History: **En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 1, Ch. 243, L. 1979.**

2-3-103. Public participation — governor to insure guidelines adopted. (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

(2) The governor shall insure that each board, bureau, commission, department, authority, agency, or officer of the state adopts coordinated rules for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request.

History: **En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(1), (5).**

2-3-104. Requirements for compliance with notice provisions. An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

(3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(2).

2-3-105. Supplemental notice by radio or television. (1) Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement such publication by a radio or television broadcast of a summary of such notice or by both of such broadcasts when in his judgment the public interest will be served.

(2) The summary of such notice shall only be read with no reference to any person by name then a candidate for political office.

(3) Such announcements shall be made only by duly employed personnel of the station from which such broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless no broadcast station exists in such county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

History: En. Sec. 1, Ch. 149, L. 1963; R.C.M. 1947, 19-201.

2-3-106. Period for which copy retained. Each radio or television station broadcasting any summary of a legal notice shall for a period of 6 months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

History: En. Sec. 2, Ch. 149, L. 1963; R.C.M. 1947, 19-202.

2-3-107. Proof of publication by broadcast. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager, or a program director of the radio or television station broadcasting the same.

History: En. Sec. 3, Ch. 149, L. 1963; R.C.M. 1947, 19-203.

2-3-108 through 2-3-110 reserved.

2-3-111. Opportunity to submit views. Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(3).

2-3-112. Exceptions. The provisions of 2-3-103 and 2-3-111 do not apply to:

(1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(3) a decision involving no more than a ministerial act.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(4).

2-3-113. Declaratory rulings to be published. The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 2-4-623(6) and 2-4-501, respectively.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 3, Ch. 184, L. 1979.

2-3-114. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under this part upon petition made within 30 days of the date of the decision of any person whose rights have been prejudiced.

History: En. 82-4229 by Sec. 4, Ch. 491, L. 1975; amd. Sec. 25, Ch. 285, L. 1977; R.C.M. 1947, 82-4229.

Part 2

Open Meetings

2-3-201. Legislative intent — liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

History: En. Sec. 1, Ch. 159, L. 1963; R.C.M. 1947, 82-3401.

2-3-202. Meeting defined. As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

History: En. 82-3404 by Sec. 2, Ch. 567, L. 1977; R.C.M. 1947, 82-3404.

2-3-203. Meetings of public agencies to be open to public — exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds shall be open to the public.

(2) Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting shall be open.

(3) However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public agency.

(4) Any committee or subcommittee appointed by a public body for the purpose of conducting business which is within the jurisdiction of that agency shall be subject to the requirements of this section.

History: En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3402; amd. Sec. 1, Ch. 380, L. 1979.

2-3-204 through 2-3-210 reserved.

2-3-211. Recording. Accredited press representatives may not be excluded from any open meeting under this part and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

History: En. 82-3405 by Sec. 4, Ch. 567, L. 1977; R.C.M. 1947, 82-3405.

2-3-212. Minutes of meetings — public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

(a) date, time, and place of meeting;

(b) a list of the individual members of the public body, agency, or organization in attendance;

(c) the substance of all matters proposed, discussed, or decided; and

(d) at the request of any member, a record by individual members of any votes taken.

History: En. Sec. 3, Ch. 159, L. 1963; amd. Sec. 3, Ch. 567, L. 1977; R.C.M. 1947, 82-3403.

2-3-213. Voidability. Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within 30 days of the decision.

History: En. 82-3406 by Sec. 5, Ch. 567, L. 1977; R.C.M. 1947, 82-3406.

2-3-214 through 2-3-220 reserved.

2-3-221. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought in district court to enforce his rights under Article II, section 9, of the Montana constitution may be awarded his costs and reasonable attorneys' fees.

History: En. 93-8632 by Sec. 1, Ch. 493, L. 1975; R.C.M. 1947, 93-8632.

CHAPTER 4

ADMINISTRATIVE PROCEDURE ACT

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Part 1

General Provisions

2-4-101. Short title. This chapter shall be known and may be cited as the "Montana Administrative Procedure Act".

History: En. Sec. 1, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 285, L. 1977; R.C.M. 1947, 82-4201.

2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) "Agency" means any agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(a) the state board of pardons, except that the board shall be subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules shall be published in the administrative rules of Montana and Montana administrative register;

(b) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(c) the board of regents and the Montana university system;

(d) the financing, construction, and maintenance of public works.

(3) "ARM" means the administrative rules of Montana.

(4) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means any person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing herein shall be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana administrative register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with 2-4-306 and shall be published in the administrative rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. Such interpretation lacks the force of law.

History: (1), (3), (9)En. by Code Commissioner, 1979; (2), (4) thru (8), (10), (11)En. Sec. 2, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 285, L. 1977; Sec. 82-4202, R.C.M. 1947; R.C.M. 1947, 82-4202; amd. Sec. 4, Ch. 184, L. 1979; amd. Sec. 2, Ch. 243, L. 1979.

2-4-103. Rules and statements to be made available to public. (1) Each agency shall:

(a) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(b) upon request of any person, provide a copy of any rule.

(2) Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(3) No agency rule is valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(c), (1)(d), (2); amd. Sec. 3, Ch. 243, L. 1979.

2-4-104. Subpoenas and enforcement — compelling testimony. (1) An agency conducting any proceeding subject to this chapter shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may and, upon request of any party appearing in a contested case, shall issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage shall be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party or to compel the giving of testimony considered material by a party, the party may make such application. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

History: En. Sec. 20, Ch. 2, Ex. L. 1971; amd. Sec. 19, Ch. 285, L. 1977; R.C.M. 1947, 82-4220(1), (2).

2-4-105. Representation by counsel. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this chapter shall not be construed as requiring an agency to furnish counsel to any such person.

History: En. Sec. 21, Ch. 2, Ex. L. 1971; amd. Sec. 20, Ch. 285, L. 1977; R.C.M. 1947, 82-4221.

2-4-106. Service. Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this chapter and in proceedings for judicial review thereof shall be as prescribed for civil actions in the district courts.

History: En. Sec. 22, Ch. 2, Ex. L. 1971; amd. Sec. 21, Ch. 285, L. 1977; R.C.M. 1947, 82-4222.

2-4-107. Construction and effect. Nothing in this chapter shall be considered to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be considered to supersede or modify any provision of this chapter, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

History: En. Sec. 23, Ch. 2, Ex. L. 1971; amd. Sec. 22, Ch. 285, L. 1977; R.C.M. 1947, 82-4223.

Part 2

Organizational and Procedural Rules

2-4-201. Rules describing agency organization and procedures. In addition to other rulemaking requirements imposed by law, each agency shall:

(1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests. The notice and hearing requirements contained in 2-4-302 do not apply to adoption of a rule relating to a description of its organization.

(2) adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(a), (1)(b).

2-4-202. Model rules. (1) The attorney general shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of 2-4-201. The attorney general shall add to, amend, or revise the model rules from time to time as he considers necessary for the proper guidance of agencies.

(2) The model rules and additions, amendments, or revisions thereto shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules does not relieve the agency from following the rulemaking procedures required by this chapter.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(3).

Part 3

Adoption and Publication of Rules

2-4-301. Authority to adopt not conferred. Except as provided in part 2, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule.

History: En. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; R.C.M. 1947, 82-4204.1(part).

2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views thereon.

(2) The notice shall be filed with the secretary of state for publication in the register as provided in 2-4-312 and mailed within 3 days of publication to persons who have made timely requests to the agency for notice of its rulemaking proceedings. The notice shall be published and mailed at least 30 days in advance of the agency's intended action.

(3) If any statute provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case may the notice period be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing shall be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing herein alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of any hearing on the intended action, the person designated by the agency to preside at the hearing shall read aloud the "Notice of Function of Administrative Code Committee" appearing in the register.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(part); amd. Sec. 4, Ch. 243, L. 1979; amd. Sec. 1, Ch. 381, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "within 3 days of publication" after "mailed" in (2); deleted a reference to advance notice in (2); inserted "the notice of proposed rulemaking must state that" after "substantive rules" near the middle of (4); inserted "by the administrative code committee" after "subdivision or agency" near the end of (4); inserted "In the discretion of the agency, contested" at the beginning of the second sentence of (5); added subsections (6) and (7).

Severability: Section 8, Ch. 381, L. 1981, was a severability section.

2-4-303. Emergency rules. (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, but the adoption of an identical rule under 2-4-302 is not precluded.

(2) The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review.

History: **En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(2); amd. Sec. 5, Ch. 243, L. 1979.**

2-4-304. Informal conferences and committees. (1) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rulemaking.

(2) An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of the committees shall be advisory only.

(3) Nothing herein shall relieve the agency from following rulemaking procedures required by this chapter.

History: **En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(4).**

2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the Montana administrative register, the differences must be described in the statement of reasons for and against agency action. When no written or oral submissions have been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language.

(3) Each proposed and adopted rule shall include a citation to the specific grant of rulemaking authority pursuant to which it or any part thereof is adopted. In addition, each proposed and adopted rule shall include a citation to the specific section or sections in the Montana Code Annotated which the rule purports to implement.

(4) Each rule proposed and adopted by an agency implementing a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy, as used in the definition set forth in 2-4-102(10), and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

(7) No rule is valid unless adopted in substantial compliance with 2-4-302 or 2-4-303 and this section and unless notice of adoption thereof is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

History: **Ap.p. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; Sec. 82-4204, R.C.M. 1947; Ap.p. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; Sec. 82-4204.1, R.C.M. 1947; R.C.M. 1947, 82-4204(part), 82-4204.1(part); amd. Sec. 6, Ch. 243, L. 1979; amd. Sec. 2, Ch. 381, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted the provision relating to substantial differences between the proposed and adopted rule, which must be described in an agency's statement of reasons, in (1); inserted "proposed and adopted" before "rule" in two places in (3); added subsection (4); added the last sentence concerning the 6-month limit as to notice to (7).

Severability: Section 8, Ch. 381, L. 1981, was a severability section.

2-4-306. Filing, format, and effective date — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it.

(2) The secretary of state may prescribe a format, style, and arrangement for notices and rules which are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that is not in compliance therewith. He shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, which shall be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with 5-18-109, the results of the poll shall be published with the rule.

(4) Each rule shall become effective after publication in the register as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date shall be the effective date;

(b) subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state or at a stated date following publication in the register if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

History: **En. Sec. 5, Ch. 2, Ex. L. 1971; amd. Sec. 10, Ch. 285, L. 1977; amd. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(part); amd. Sec. 7, Ch. 243, L. 1979; amd. Sec. 12, Ch. 268, L. 1979.**

2-4-307. Omissions from ARM or register. (1) An agency may adopt by reference any model code, federal agency rule, rule of any agency of this state or other similar publication if the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient.

(2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by reference and a statement of the general subject matter of the omitted rule and must state where a copy of the omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

(3) No rule originally adopting by reference any model code or rule provided for in subsection (1) of this section may adopt any later amendments or editions of the material adopted. Except as provided in subsection (5), each later amendment or edition may be adopted by reference only by following the rulemaking procedure required by this chapter.

(4) If requested by a three-fourths vote of the administrative code committee, an agency must immediately publish the full or partial text of any pertinent material adopted by reference under this section. The committee may not require the publication of copyrighted material. Publication of the text of a rule previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed rulemaking.

(5) Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for federal funding, only a notice of incorporation by reference of such later amendments shall be filed in the Montana Administrative Register. This notice shall contain the information required by subsection (2) of this section and shall state the effective date of such incorporation. The effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal funding in which event the effective date may be no sooner than the date of publication. A hearing is not required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. No further notice of adoption or preparation of a replacement page for the administrative rules of Montana is required.

(6) If a hearing is requested under subsection (5), the petition for hearing shall contain a request for an amendment and may contain suggested language, reasons for an amendment, and any other information pertinent to the subject of the rule.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(3); amd. Sec. 8, Ch. 243, L. 1979; amd. Sec. 1, Ch. 591, L. 1981.

Compiler's Comments

1981 Amendment: Added subsections (3) through (6); divided former section into subsections (1) and (2) with substantial amendment; deleted need for the secretary of state to initiate omissions; deleted need for filing all omitted material with the secretary of state; rewrote both subsections to reflect incorporation by reference rather than omission of material incorporated by reference (for prior version see sec. 8, Ch. 243, L. 1979).

2-4-308 through 2-4-310 reserved.

2-4-311. Publication and arrangement of ARM. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this chapter in ARM. The secretary of state shall supplement, revise, and publish ARM or any part thereof as often as he considers necessary. He may include such editorial notes, cross-references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to ARM at such times and in such form as he considers appropriate.

(2) ARM shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications, determined in accordance with 2-4-313(4), shall be paid by the agency.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(part); amd. Sec. 9, Ch. 243, L. 1979.

2-4-312. Publication and arrangement of register. (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with him at least once a month or as directed by the administrative code committee but not more often than twice a month.

(2) He shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the same. The cost, determined in accordance with 2-4-313(4), must be paid by appropriation from the general fund to the account within the revolving fund created in 2-4-313(5). He shall send the register to any other person who pays a subscription fee which he shall fix in accordance with 2-4-313(4).

(3) The register must contain three sections, a rules section, a notice section, and an interpretation section:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to ARM.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(2), (9); amd. Sec. 10, Ch. 243, L. 1979.

2-4-313. Distribution, costs, and maintenance. (1) The secretary of state shall distribute copies of ARM and supplements or revisions thereto, with costs paid as provided in 2-4-312(2), to the following:

(a) attorney general, one copy;

(b) clerk of each court of record of this state, one copy;

(c) clerk of United States district court for the district of Montana, one copy;

(d) clerk of United States court of appeals for the ninth circuit, one copy;

(e) each county clerk of this state, for use of county officials and the public, one copy, which may be maintained in a public library in the county seat or in the county offices;

(f) state law library, one copy;

(g) state historical society, one copy;

(h) each unit of the Montana university system, one copy;

(i) law library of the university of Montana, one copy;

(j) legislative council, three copies;

(k) library of congress, one copy;

(l) state library, one copy.

(2) The secretary of state, clerk of each court of record in the state, clerk of each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of ARM, including supplements or revisions thereto. Such persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall also maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to ARM and supplements or revisions thereto and the register available to any person at prices fixed in accordance with subsection (4).

(4) The secretary of state, in consultation with the administrative code committee, shall determine the cost of supplying copies of ARM and supplements or revisions thereto and the register. The cost shall be the approximate cost of publication, including indexing, printing or duplicating, and mailing, less fees charged agencies pursuant to subsection (6) and money appropriated for 2-4-312(2) and 2-4-313(1). However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions thereto and the register.

(5) The secretary of state shall deposit all fees he collects in an account within the revolving fund created for paying the expenses of publication of ARM and the register.

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. He shall fix, in consultation with the administrative code committee, the fee to cover a portion of the costs of publication and mailing.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(5) thru (8), (10), (11); amd. Sec. 11, Ch. 243, L. 1979.

2-4-314. Biennial review by agencies — report. (1) Each agency shall at least biennially review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

(2) Prior to October 1, 1980, and prior to October 1 of each even-numbered year thereafter, each agency shall prepare and submit a report to the

administrative code committee, in tabular or other form, indicating the agency's recommendations for legislation which will clarify existing grants of rulemaking authority and grant or eliminate rulemaking authority as necessary.

(3) The committee may recommend to the legislature those modifications, additions, or deletions of agency rulemaking authority which the committee considers necessary.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(6); amd. Sec. 4, Ch. 600, L. 1979; amd. Sec. 3, Ch. 381, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (3).

Severability: Section 8, Ch. 381, L. 1981, was a severability section.

2-4-315. Petition for adoption, amendment, or repeal of rules. An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

History: En. Sec. 7, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 236, L. 1974; amd. Sec. 12, Ch. 285, L. 1977; R.C.M. 1947, 82-4207.

2-4-316 through 2-4-320 reserved.

2-4-321. Definitions. As used in 2-4-321 through 2-4-323, the following definitions apply:

(1) "MCA" means Montana Code Annotated.

(2) "R.C.M." means Revised Codes of Montana, 1947.

(3) "ARM" means Administrative Rules of Montana.

(4) "Recodify" means to compile, rearrange, and prepare for publication. It includes without changing the meaning, effect, or intent of any rule:

(a) correcting or changing punctuation, capitalization, spelling, or grammatical construction and numbering as required by uniform literary and rule-drafting practice;

(b) substituting the appropriate MCA reference for reference to a section of, to a chapter of, or to an entire division of the R.C.M.;

(c) substituting the calendar date for "effective date", "hereafter", and similar terms;

(d) creating new titles, chapters, subchapters, sections, or other divisions of ARM;

(e) changing or creating catchlines to clearly reflect the content of the section;

(f) changing or inserting language as made necessary because of rearrangement;

(g) eliminating redundant words;

(h) when given direction or authority by a statute or another ARM section, correcting inaccurate or obsolete references to:

(i) titles of officers or agencies, such as those changed by executive reorganization statutes or subsequent interagency reorganizations;

(ii) other ARM or R.C.M. sections, such as those which have been repealed or repealed and replaced;

(i) changing inaccurate terminology to comply with statutory or rule definitions or short-form amendments;

(j) renumbering all ARM rules in the new three-part numbering system;

(k) eliminating unnecessary information in the history of ARM rules;

(l) reserving blocks of page numbers in ARM where growth has been consistent in the past or future growth is anticipated;

(m) providing the secretary of state with an "old to new" numbering table to be filed in front of each title;

(n) removing all repealed rules from ARM and listing them on the "old to new" numbering table;

(o) providing the secretary of state with a schedule of prospective chapter numbers and prospective page numbers, indicating the blocks of page numbers to be reserved in the agency's title, for the purpose of assisting the secretary of state in providing to ARM subscribers instructions for page removal and insertion of replacement pages.

History: En. Sec. 1, Ch. 600, L. 1979.

2-4-322. Agency duties. (1) Prior to July 1, 1980, agencies shall recodify all the rules of a general and permanent nature appearing in ARM, prepare them for publication, and refile them, in correct format and style, with the secretary of state.

(2) The secretary of state may set a schedule requiring an agency to recodify and refile its rules in chapter increments and prescribing the number of recodified pages to be submitted by each agency to the secretary of state at each scheduled date for replacement pages during the period beginning on April 20, 1979, and ending on July 1, 1980.

(3) Each agency shall submit a schedule to the secretary of state listing the chapter names, chapter numbers, and pages in its title that will be recodified and refiled to meet the requirements of subsection (2). The validity of the rules that are not refiled by the scheduled date is suspended on that date.

(4) Such suspended rules may be recodified and refiled with the secretary of state by the next scheduled replacement page date, and if so recodified and refiled, they become valid and effective on that date. If such suspended rules are not so recodified and refiled by that date, they are permanently invalid and may be revived only by fulfilling all requirements of the Montana Administrative Procedure Act relating to rulemaking in the same manner as new rules proposed for adoption.

(5) Prior to September 1, 1980, each agency shall prepare and submit to the secretary of state a report, which must be certified by the agency as the Official Report of the Recodification of Title .... The report must explain and indicate, in tabular or other form, all changes made during recodification, other than the changes listed in subsections (4)(a) through (4)(e) and (4)(j) through (4)(o) of 2-4-321, to clearly indicate the character of and rationale for each change. The report must be made available by the secretary of state on request and at a fee set by 2-6-103.

(6) The effective date of the recodification is the date of the replacement page issue.

History: **En. Sec. 2, Ch. 600, L. 1979.**

2-4-323. Effect of recodification and refiling. The rules in ARM that are recodified and refiled pursuant to 2-4-322 shall be given effect as a continuation of the rules in ARM as they exist on April 20, 1979, and not as a new adoption. A rule that is invalid, in whole or in part, on April 20, 1979, is not rendered valid by the process of recodification and refiling.

History: **En. Sec. 3, Ch. 600, L. 1979.**

Part 4

Legislative Review of Rules

2-4-401. Administrative code committee — staff, meetings, and compensation. (1) The administrative code committee may retain whatever employees, consultants, or counsel as are necessary to carry out the provisions of this chapter and to advise the publisher in relation to the text and legal authority of the material published in the register or ARM, within the limitations of legislative appropriations.

(2) The committee shall meet as often as may be necessary during and between legislative sessions.

(3) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: **(1)En. 82-4203.4 by Sec. 3, Ch. 410, L. 1975; amd. Sec. 6, Ch. 285, L. 1977; Sec. 82-4203.4, R.C.M. 1947; (2), (3)En. 82-4203.3 by Sec. 2, Ch. 410, L. 1975; amd. Sec. 9, Ch. 103, L. 1977; Sec. 82-4203.3, R.C.M. 1947; R.C.M. 1947, 82-4203.3, 82-4203.4.**

2-4-402. Powers of the committee — duty to review rules. (1) The committee shall review all proposed rules filed with the secretary of state.

(2) Rules proposed by the department of revenue may be reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act.

(3) The committee may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;

(b) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(c) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

(d) review the incidence and conduct of administrative proceedings under this chapter.

History: **En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(a) thru (1)(c); amd. Sec. 12, Ch. 243, L. 1979; amd. Sec. 11, Ch. 268, L. 1979; amd. Sec. 4, Ch. 381, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted a reference to a hearing in accordance with 2-4-302 through 2-4-305 from the end of (3)(a); deleted "prepare recommendations for the adoption, amendment, or rejection of a rule" after "proposing the rule" in (3)(a).

Severability: Section 8, Ch. 381, L. 1981, was a severability section.

2-4-403. Legislative intent — poll. (1) If the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature.

(2) Should 20 or more legislators object to any rule, the committee shall poll the members of the legislature.

(3) The poll shall include an opportunity for the agency to present a written justification for the rule to the members of the legislature.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(d), (1)(e).

2-4-404. Evidentiary value of legislative poll. In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll shall be admissible in any court proceeding involving the validity of the rule. In the event that the poll determines that a majority of the members of both houses find the proposed rule is contrary to the intent of the legislature, the rule shall be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.

History: En. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(3).

2-4-405. Estimate of economic impact. (1) Upon request of the administrative code committee, an agency shall prepare a statement of the estimated economic impact of the adoption, amendment, or repeal of a rule as proposed. The statement must include an estimate of:

(a) the cost to the state of administering and enforcing the rule;

(b) the aggregate cost of compliance to all persons affected; and

(c) any economic benefit of compliance to all persons affected.

(2) The statement must be filed with the secretary of state for publication in the register and mailed to persons who have requested advance notice of the agency's rulemaking proceedings. The statement must be published and mailed at least 20 days prior to the adoption, amendment, or repeal of the rule. If a hearing is held, it must be published 20 days prior to the hearing.

(3) If it is impossible to formulate such an estimate, the reasons for impossibility of formulation must be published instead of the estimate.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

History: En. Sec. 1, Ch. 480, L. 1979.

2-4-406 through 2-4-409 reserved.

2-4-410. Report of litigation. Each agency shall report to the administrative code committee any judicial proceedings in which the construction or interpretation of any provision of this chapter is in issue and may report to the committee any proceeding in which the construction or interpretation of any rule of the agency is in issue. Upon request of the committee, copies of documents filed in any proceeding in which the construction or interpretation of either this chapter or an agency rule is in issue must be made available to the committee by the agency involved.

History: **En. Sec. 6, Ch. 381, L. 1981.**

Compiler's Comments

Codification Instruction: Section 7, Ch. 381, L. 1981, provided: "Section 6 is intended to be codified as an integral part of Title 2, chapter 4, and the provisions of Title 2, chapter 4, apply to section 6."

Severability: Section 8, Ch. 381, L. 1981, was a severability section.

2-4-411. Report. The committee shall prepare a report to the legislature at least once each biennium and may recommend amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 2-4-412.

History: **En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(2).**

2-4-412. Legislative review of rules — effect of failure to object. (1) The legislature may, by joint resolution, repeal any rule in ARM. If a rule is repealed, the legislature shall in the joint resolution state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also, by joint resolution, direct a change to be made in any rule in ARM or direct the adoption of an additional rule. If a change in any rule or the adoption of an additional rule is directed to be made, the legislature shall in the joint resolution state the nature of the change or the additional rule to be made and its reasons therefor. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction.

(3) Rules made by agencies and changes in rules directed by the legislature under subsection (2) of this section shall conform and be pursuant to statutory authority.

(4) Failure of the legislature or the administrative code committee to object in any manner to the adoption, amendment, or repeal of a rule is inadmissible in the courts of this state to prove the validity of any rule.

History: **En. 82-4203.1 by Sec. 1, Ch. 239, L. 1973; amd. Sec. 1, Ch. 236, L. 1974; amd. Sec. 4, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.1; amd. Sec. 5, Ch. 381, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (4).

Severability: Section 8, Ch. 381, L. 1981, was a severability section.

Part 5

Judicial Notice and Declaratory Rulings

2-4-501. Declaratory rulings by agencies. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases.

History: En. Sec. 18, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4218; amd. Sec. 13, Ch. 243, L. 1979.

2-4-502 through 2-4-504 reserved.

2-4-505. Judicial notice of rules. The courts shall take judicial notice of any rule filed and published under the provisions of this chapter.

History: En. Sec. 8, Ch. 2, Ex. L. 1971; amd. Sec. 13, Ch. 285, L. 1977; R.C.M. 1947, 82-4208.

2-4-506. Declaratory judgments on validity or application of rules. (1) A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.

(2) A rule may also be declared invalid in such an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of authorizing statute, as evidenced by documented legislative intent.

(3) If the administrative code committee has objected to the adoption or amendment of a rule on the grounds set forth in subsection (2), the agency bears the burden, in any action brought under this section, of proving that its rule was not adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute.

(4) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

(5) The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business or in which the agency maintains its principal office. The agency shall be made a party to the action.

History: En. Sec. 19, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 560, L. 1977; R.C.M. 1947, 82-4219; amd. Sec. 14, Ch. 243, L. 1979.

Part 6

Contested Cases

2-4-601. Notice. (1) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice.

(2) The notice must include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

(e) a statement that a formal proceeding may be waived pursuant to 2-4-603.

History: **En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(1), (2); amd. Sec. 1, Ch. 277, L. 1979.**

2-4-602. Discovery. Each agency shall provide in its rules of practice for discovery prior to a contested case hearing.

History: **En. Sec. 19, Ch. 285, L. 1977; R.C.M. 1947, 82-4220(3).**

2-4-603. Informal disposition and hearings — waiver of administrative proceedings. (1) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then utilize informal proceedings under 2-4-604. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition shall contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision.

History: **En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(4); amd. Sec. 2, Ch. 277, L. 1979.**

2-4-604. Informal proceedings. (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency's action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings thereon;

(d) all matters placed on the record after ex parte communication pursuant to 2-4-613;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at his cost a transcription of the recording, or both. Objections shall become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not such evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

History: **En Sec. 3, Ch. 277, L. 1979.**

2-4-605 through 2-4-610 reserved.

2-4-611. Hearing examiners — legal services unit — conduct of hearings — disqualification of hearing examiners and agency members. (1) An agency may appoint hearing examiners for the conduct of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.

(2) An agency may elect to request a hearing examiner from the legal assistance program within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal assistance program or the other agency.

(3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

History: **En. Sec. 11, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4211(part); amd. Sec. 1, Ch. 467, L. 1979.**

2-4-612. Hearing — rules of evidence, cross-examination, judicial notice. (1) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(2) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the

record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(3) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(4) All testimony shall be given under oath or affirmation.

(5) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

(6) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

(7) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

History: En. Secs. 9, 10, 11, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(3), 82-4210, 82-4211(part).

2-4-613. Ex parte consultations. Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, shall not communicate with any party or his representative in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate.

History: En. Sec. 14, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4214.

2-4-614. Record — transcription. (1) The record in a contested case shall include:

(a) all pleadings, motions, intermediate rulings;

(b) all evidence received or considered, including a stenographic record of oral proceedings when demanded by a party;

(c) a statement of matters officially noticed;

(d) questions and offers of proof, objections, and rulings thereon;

(e) proposed findings and exceptions;

(f) any decision, opinion, or report by the hearing examiner or agency member presiding at the hearing;

(g) all staff memoranda or data submitted to the hearing examiner or members of the agency as evidence in connection with their consideration of the case.

(2) The stenographic record of oral proceedings or any part thereof shall be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription shall be paid by the requesting party.

History: En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(5), (6).

2-4-615 through 2-4-620 reserved.

2-4-621. When absent members render decision — proposal for decision and opportunity to submit findings and conclusions — modification by agency. (1) When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision must contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing unless he becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

(4) A hearing officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided he has completed all his duties as hearing officer.

History: En. Sec. 12, Ch. 2, Ex. L. 1971; amd. Sec. 14, Ch. 285, L. 1977; R.C.M. 1947, 82-4212(part); amd. Sec. 4, Ch. 277, L. 1979.

2-4-622. When hearings officer unavailable for decision. (1) If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties.

(2) The parties may waive compliance with 2-4-621 and 2-4-622 by written stipulation.

History: En. Sec. 12, Ch. 2, Ex. L. 1971; amd. Sec. 14, Ch. 285, L. 1977; R.C.M. 1947, 82-4212(part).

2-4-623. Final orders — notification — availability. (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) Findings of facts shall be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law shall be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.

(5) Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. No such agency decision or order is valid or effective against any person or party nor may it be invoked by the agency for any purpose until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

History: (1), (3) thru (6)En. Sec. 13, Ch. 2, Ex. L. 1971; amd. Sec. 15, Ch. 285, L. 1977; Sec. 82-4213, R.C.M. 1947; (2)En. Sec. 9, Ch. 2, Ex. L. 1971; Sec. 82-4209, R.C.M. 1947; R.C.M. 1947, 82-4209(7), 82-4213.

2-4-624 through 2-4-630 reserved.

2-4-631. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) Whenever notice is required, no revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

History: En. Sec. 15, Ch. 2, Ex. L. 1971; amd. Sec. 16, Ch. 285, L. 1977; R.C.M. 1947, 82-4215; amd. Sec. 1, Ch. 465, L. 1979.

Part 7

Judicial Review of Contested Cases

2-4-701. Immediate review of agency action. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part).

2-4-702. Initiating judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Proceedings for review shall be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

(b) The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms which it considers proper.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part).

2-4-703. Receipt of additional evidence. If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(5).

2-4-704. Standards of review. (1) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(g) because findings of fact, upon issues essential to the decision, were not made although requested.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(6), (7).

2-4-705 through 2-4-710 reserved.

2-4-711. Appeals — staying agency decision. An aggrieved party may obtain review of a final judgment of a district court under this part by appeal to the supreme court within 60 days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

(1) if appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for 20 days from the date of filing of the notice;

(2) if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

History: En. Sec. 17, Ch. 2, Ex. L. 1971; amd. Sec. 18, Ch. 285, L. 1977; R.C.M. 1947, 82-4217.

CHAPTER 5

RESERVED

CHAPTER 6

PUBLIC RECORDS

Part 1 — Public Records Generally

Section

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Part 1

Public Records Generally

2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private.

History: En. Secs. 3170, 3171, 3172, 3182, C. Civ. Proc. 1895; re-en. Secs. 7895, 7896, 7897, 7900, Rev. C. 1907; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1887,

1888, 1889, 1894; re-en. Secs. 10539, 10540, 10541, 10544, R.C.M. 1935; R.C.M. 1947, 93-1001-1, 93-1001-2, 93-1001-3, 93-1001-6.

2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

History: En. Secs. 3180, 3181, C. Civ. Proc. 1895; re-en. Secs. 7898, 7899, Rev. C. 1907; re-en. Secs. 10542, 10543, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1892, 1893; re-en. Secs. 10542, 10543, R.C.M. 1935; R.C.M. 1947, 93-1001-4, 93-1001-5.

2-6-103. Filing and copying fees. (1) The secretary of state, for services performed in his office, shall charge and collect the following fees:

(a) for each copy of any law, resolution, record, or other document or paper on file in his office, except corporate papers, 40 cents per folio or, if the copy is made by any process of reproduction by photographic, photostatic, or similar process, the fee shall be 50 cents per page or fraction thereof;

(b) for affixing certificate and seal, $2;

(c) for receiving and recording each official bond, $10;

(d) for each commission or other document signed by the governor and attested by the secretary of state (pardon, military commissions, and extraditions excepted), $5;

(e) for issuing each certificate of record, $5;

(f) for filing and recording miscellaneous papers, records, or other documents, $5;

(g) for filing and recording any other paper not otherwise herein provided for, $5;

(h) for filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, $5;

(i) when a copy of any law, resolution, record, or other document or paper on file in the office of the secretary of state is presented for comparison and certification, 10 cents per folio must be charged and collected for proofreading the same.

(2) No member of the legislature or state or county officer may be charged for any search relative to matters appertaining to the duties of his office or for a certified copy of any law or resolution passed by the legislature relative to his official duties.

(3) Fees shall be collected in advance and when collected by the secretary of state shall be deposited pursuant to 17-6-105.

History: En. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R.C.M. 1921; Cal. Pol. C. Sec. 416; amd. Sec. 1, Ch. 50, L. 1935; re-en. Sec. 145, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1961; amd. Sec. 141, Ch. 300, L. 1967; amd. Sec. 3, Ch. 185, L. 1971; amd. Sec. 1, Ch. 137, L. 1974; R.C.M. 1947, 25-102; amd. Sec. 5, Ch. 184, L. 1979; amd. Sec. 18, Ch. 429, L. 1979.

2-6-104. Records of officers open to public inspection. Except as provided in 40-8-126 and 27-18-111, the public records and other matters in the office of any officer are at all times during office hours open to the inspection of any person.

History: En. Sec. 1136, Pol. C. 1895; re-en. Sec. 438, Rev. C. 1907; re-en. Sec. 455, R.C.M. 1921; Cal. Pol. C. Sec. 1032; re-en. Sec. 455, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1945; R.C.M. 1947, 59-512(part).

2-6-105. Removal of public records. Any record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.

History: En. Sec. 3240, C. Civ. Proc. 1895; re-en. Sec. 7953, Rev. C. 1907; re-en. Sec. 10597, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1950; re-en. Sec. 10597, R.C.M. 1935; R.C.M. 1947, 93-1101-20(part).

2-6-106. Possession of records. Every public officer is entitled to the possession of all books and papers pertaining to his office or in the custody of a former incumbent by virtue of his office.

History: En. Sec. 1120, Pol. C. 1895; re-en. Sec. 427, Rev. C. 1907; re-en. Sec. 460, R.C.M. 1921; Cal. Pol. C. Sec. 1014; re-en. Sec. 460, R.C.M. 1935; R.C.M. 1947, 59-530; Sec. 2-6-303(1), MCA 1979; redes. 2-6-106 by Code Commissioner, 1979.

2-6-107. Proceedings to compel delivery of records. If any person, whether a former incumbent or another person, refuses or neglects to deliver to the actual incumbent any such books or papers, such actual incumbent may apply, by complaint, to any district court or judge of the county where the person so refusing or neglecting resides and the court or judge must proceed in a summary way, after notice to the adverse party, to hear the allegations and proofs of the parties and to order any such books and papers to be delivered to the petitioners.

History: En. Sec. 1121, Pol. C. 1895; re-en. Sec. 428, Rev. C. 1907; re-en. Sec. 461, R.C.M. 1921; Cal. Pol. C. Sec. 1015; re-en. Sec. 461, R.C.M. 1935; R.C.M. 1947, 59-531; Sec. 2-6-305, MCA 1979; redes. 2-6-107 by Code Commissioner, 1979.

2-6-108. Attachment and warrant to enforce. The execution of the order and delivery of the books and papers may be enforced by attachment as for a witness and also, at the request of the plaintiff, by a warrant directed to the sheriff or a constable of the county, commanding him to search for such books and papers and to take and deliver them to the plaintiff.

History: En. Sec. 1122, Pol. C. 1895; re-en. Sec. 429, Rev. C. 1907; re-en. Sec. 462, R.C.M. 1921; Cal. Pol. C. Sec. 1016; re-en. Sec. 462, R.C.M. 1935; R.C.M. 1947, 59-532; Sec. 2-6-306, MCA 1979; redes. 2-6-108 by Code Commissioner, 1979.

2-6-109. Prohibition on distribution or sale of mailing lists — penalty. (1) Except as provided in subsections (3), (4), (5), and (6), in order to protect the privacy of those who deal with state and local government:

(a) no agency may distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) no list of persons prepared by the agency may be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of original documents or applications which are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, or to lists of the names of employees governed by Title 39, chapter 31.

(5) This section shall not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted therefrom as provided in 20-30-102.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 606, L. 1979.

2-6-110 reserved.

2-6-111. Custody and reproduction of records by secretary of state. (1) The secretary of state is charged with the custody of:

(a) the enrolled copy of the constitution;

(b) all the acts and resolutions passed by the legislature;

(c) the journals of the legislature;

(d) the great seal;

(e) all books, records, deeds, parchments, maps, and papers kept or deposited in his office pursuant to law.

(2) All records included in subsection (1) may be kept and recorded by photostatic or microphotographic means, microfilm, or any other mechanical process that produces a clear, accurate, and permanent duplicate of the original record in accordance with standards not less than those approved for permanent records by the American national standards institute.

(3) The state records committee created by 2-15-1013 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records; in that case, reproduction will not be necessary. The reproduction, or certified copy thereof, may be used in place of the original for all purposes, including as evidence in any court or proceeding, and shall have the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies shall be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than its original size and for preparing, for persons entitled thereto, copies of the record.

(6) All duplicates of all records shall be identified and indexed.

History: En. Sec. 400, Pol. C. 1895; re-en. Sec. 153, Rev. C. 1907; re-en. Sec. 133, R.C.M. 1921; Cal. Pol. C. Sec. 407; re-en. Sec. 133, R.C.M. 1935; R.C.M. 1947, 82-2201; amd. Sec. 1, Ch. 152, L. 1979.

Part 2

Public Records Management

2-6-201. Purpose. The purpose of this part is to create an effective records management program for executive branch agencies of the state of Montana by establishing guidelines and procedures for the efficient and economical control of the creation, utilization, maintenance, and preservation of state records.

History: En. 82-3333 by Sec. 2, Ch. 339, L. 1977; R.C.M. 1947, 82-3333.

2-6-202. Definitions. As used in this part, the following definitions apply:

(1) "Public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies thereof, regardless of physical form or characteristics, that has been made or received by a state agency in connection with the transaction of official business and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(2) "State records committee" or "committee" means the state records committee provided for in 2-15-1013.

History: (1)En. 82-3334 by Sec. 3, Ch. 339, L. 1977; Sec. 82-3334, R.C.M. 1947; (2)En. by Code Commissioner, 1979; R.C.M. 1947, 82-3334(1).

2-6-203. Department of administration's powers and duties. (1) In order to insure the proper management and safeguarding of public records, the department of administration shall undertake the following:

(a) establish guidelines for inventorying, cataloging, retaining, and transferring all public records of state agencies;

(b) review and analyze all state agency filing systems and procedures and approve filing system equipment requests;

(c) establish and operate the state records center, as authorized by appropriation, for the purpose of storing and servicing public records not retained in office space;

(d) gather and disseminate information on all phases of records management, including current practices, methods, procedures, and devices for the efficient and economical management of records;

(e) operate a central microfilm unit which will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the department of administration; and

(f) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies.

(2) Upon request, the department shall assist and advise in the establishment of records management procedures in the legislative and judicial

branches of state government and shall, as required by them, provide services similar to those available to the executive branch.

History: (1)En. 82-3335 by Sec. 4, Ch. 339, L. 1977; Sec. 82-3335, R.C.M. 1947; (2)En. 82-3337 by Sec. 6, Ch. 339, L. 1977; Sec. 82-3337, R.C.M. 1947; R.C.M. 1947, 82-3335, 82-3337.

2-6-204. State records committee approval. The committee shall approve, modify, or disapprove the recommendations on retention schedules of all public records to determine which documents not included in the provisions of this part are to be designated public records and approve agency requests to dispose of such public records.

History: En. 82-3338 by Sec. 7, Ch. 339, L. 1977; R.C.M. 1947, 82-3338(3).

2-6-205. Preservation of public records. All public records are and shall remain the property of the state. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

History: En. 82-3334 by Sec. 3, Ch. 339, L. 1977; R.C.M. 1947, 82-3334(2).

2-6-206. Protection of essential records. (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the department of administration. The list shall be reviewed from time to time by the elected or appointed officers to insure its accuracy. Any changes or revisions shall be forwarded to the department.

(2) Each elected and appointed officer of state government shall insure that the security of essential records is accomplished by the most economical means possible. Protection of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives, or any other method approved by the department.

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the department.

History: En. 82-3341 by Sec. 10, Ch. 339, L. 1977; R.C.M. 1947, 82-3341.

2-6-207. Certified copies of public records. (1) The Montana historical society shall reproduce and certify copies of public records in its possession upon application of any citizen of this state.

(2) The certified copy of a public record has the same force in law as if made by the original custodian.

History: En. Sec. 1, Ch. 102, L. 1979.

2-6-208 through 2-6-210 reserved.

2-6-211. Transfer of public records. (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government which may be abolished or discontinued shall be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if such records are considered to have permanent administrative or historical value.

(2) When records are transferred to the state records center, the agency so doing loses none of its rights of control and access. The state records center is only a custodian of the agency records, and access will only be by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

(3) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the department of administration and request a change in the schedule.

History: En. 82-3340 by Sec. 9, Ch. 339, L. 1977; R.C.M. 1947, 82-3340.

2-6-212. Disposal of public records. (1) Except as provided in subsection (2), no public record may be disposed of or destroyed without the unanimous approval of the state records committee. When approval is required, a request for the disposal or destruction must be submitted to the state records committee by the agency concerned.

(2) The state records committee may by unanimous approval establish categories of records for which no disposal request is required, providing those records are retained for the designated retention period.

History: En. 82-3339 by Sec. 8, Ch. 339, L. 1977; R.C.M. 1947, 82-3339; amd. Sec. 1, Ch. 173, L. 1981.

Compiler's Comments

1981 Amendment: Added "Except as provided in subsection (2)" at the beginning of (1); added subsection (2); and made changes to conform to the exception.

Statement of Intent: The statement of intent attached to SB 187 (Ch. 173, L. 1981) provided: "The intent is to have the State Records Committee create by rule categories of records of minor importance for which agencies would be relieved of the burden of repetitively submitting disposal requests; for example:

(a) motor vehicle applications that are being microfilmed;

(b) inactive teacher certification records that are being microfilmed;

(c) interstate invoices in the statewide budget and accounting system."

2-6-213. Agency responsibilities and transfer schedules. Each executive branch agency of state government shall administer its records management function and shall:

(1) coordinate all aspects of the agency records management function;

(2) manage the inventorying of all public records within the agency for disposition, scheduling, and transfer action in accordance with procedures prescribed by the department of administration and the state records committee;

(3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the department of administration and the state records committee minimal retentions for all copies of public records within the agency;

(4) approve all records disposal requests which are submitted by the agency to the state records committee; and

(5) review established records retention schedules to insure that they are complete and current.

History: En. 82-3336 by Sec. 5, Ch. 339, L. 1977; R.C.M. 1947, 82-3336.

Part 3

Records of Elected Executive Branch Officers

2-6-301. Definitions. As used in this part the following definitions apply:

(1) "Constitutionally designated and elected officials of the executive branch of government" means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, and auditor.

(2) "Official records" means any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies thereof, regardless of physical form or characteristics, that has been made or received by a constitutionally designated and elected official of the executive branch of government in transacting his official duties and preserved for informational value or as evidence of a transaction.

History: En. 59-530.1 by Sec. 1, Ch. 441, L. 1977; R.C.M. 1947, 59-530.1.

2-6-302. Official records management — powers and duties. In order to insure the proper management and safeguarding of official records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing and servicing official records transferred to the custody of the state archives;

(2) in cooperation with the department of administration and the state records committee provided for in 2-15-1013 establish guidelines for the inventorying, cataloging, retention, and transfer of all official records;

(3) maintain and enforce restrictions on access to official records in the custody of the state archives in accordance with the provisions of this part;

(4) provide adequate housing and care of official records in the custody of the state archives to insure their proper preservation and use by the public;

(5) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate official records and official records of insignificant historical value from the records deposited in the state archives.

History: En. 59-530.3 by Sec. 3, Ch. 441, L. 1977; R.C.M. 1947, 59-530.3; amd. Sec. 6, Ch. 184, L. 1979.

2-6-303. Ownership of records — transfer. (1) All official records shall remain the property of the state. They shall be delivered by outgoing officials to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this part.

(2) A public officer may, with the concurrence of the Montana historical society, transfer to the state archives official records that he has been specifically directed by statute to preserve or keep in his office.

History: (1)En. 59-530.2 by Sec. 2, Ch. 441, L. 1977; Sec. 59-530.2, R.C.M. 1947; (2)En. Sec. 3, Ch. 102, L. 1979.

2-6-304. Outgoing officials — records management duties. (1) Within 2 years after the completion of the final term of office of a constitutionally designated and elected official of the executive branch of government, all of the official records not necessary to the current operation of that office shall be subject to storage, disposal, or transfer in accordance with the provisions of this part.

(2) All official records of a retiring constitutionally designated and elected official not necessary to the current operation of that office and considered worthy of preservation by the Montana historical society shall be transferred to the custody of the state archives within that 2-year period.

(3) An outgoing official, in consultation with staff members of the Montana historical society, shall review his official records and isolate any items of a purely personal nature. Such personal papers are not subject to this part, but they may be deposited with the official papers at the official's discretion.

(4) An outgoing official, in consultation with staff members of the Montana historical society, may restrict access to certain segments of his official records. No restrictions may be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.

(5) Any question concerning the transfer or other status of official records arising between the state archives and an elected official's office shall be decided by a three-fourths vote of the members of the state records committee.

History: En. 59-530.4 by Sec. 4, Ch. 441, L. 1977; R.C.M. 1947, 59-530.4.

2-6-305. Renumbered 2-6-107 by Code Commissioner, 1979.

2-6-306. Renumbered 2-6-108 by Code Commissioner, 1979.

2-6-307. Certified copies of official records. (1) The Montana historical society shall reproduce and certify copies of official records in its possession upon application of any citizen of this state.

(2) The certified copy of an official record has the same force in law as if made by the original custodian.

History: En. Sec. 2, Ch. 102, L. 1979.

CHAPTER 7

REPORTS AND AUDITS

Part 1 — Reports

Section

2-7-101. Definitions.
2-7-102. Biennial reports by state agencies — submission to members of the legislature — publication.
2-7-103. Review by governor of executive branch — report to legislature.
2-7-104. Revenue estimate — report to governor and legislature.
2-7-105. Tax information submitted.

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Part 5 — Audits of Political Subdivisions

2-7-501. Definition.

2-7-502. Audit purpose.
2-7-503. Audits of local governmental entities.
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2-7-506. Audit by independent accountant or auditor.
2-7-507. Duty of officers to aid in audit.
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2-7-511. Access to public accounts — suspension of officer in case of discrepancy.
2-7-512. Exit review conference.
2-7-513. Content of audit report.
2-7-514. Issuance and filing of audit report.
2-7-515. Actions by governing bodies.
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2-7-517. Penalty.
2-7-518. Deposit of audit fees.
Sections 2-7-519 and 2-7-520 reserved.
2-7-521. Publication.

Part 1

Reports

2-7-101. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Elective official" means the superintendent of public instruction, public service commissioner, secretary of state, attorney general, and state auditor.

(2) "State agency" means any elective official, office, department, board, bureau, or commission which is of the executive branch of state government.

History: En. Sec. 1, Ch. 93, L. 1969; R.C.M. 1947, 82-4001.

2-7-102. Biennial reports by state agencies — submission to members of the legislature — publication. (1) Before September 1 of each odd-numbered year, each state agency shall submit a written report to the governor of its activities during the immediately preceding fiscal biennium.

(2) Each report shall contain information prescribed by the governor describing fully the activities of the state agency. Reports shall contain recommendations from each state agency for improvements in programs administered by it.

(3) State agency reports shall be filed in the governor's office and are open for inspection by any person.

(4) From the reports submitted to him the governor shall:

(a) delete extraneous or duplicated data;

(b) standardize the presentation of data to the extent feasible and desirable;

(c) request pertinent additional information he wishes included in the report;

(d) prepare a report for submission to the members of the legislature.

(5) Except as provided in subsection (6) of this section, the governor may authorize the publication of a state agency report in pamphlet form. The

report in pamphlet form shall be published and distributed by the state agency responsible for reporting.

(6) An elective official may publish an annual report in pamphlet form, in addition to the report to the governor required by subsection (1) of this section, without permission from the governor.

(7) Copies of each report published as provided in subsections (4), (5), and (6) of this section shall be distributed as follows:

(a) two copies to the secretary of state;

(b) two copies to the legislative council;

(c) two copies to the legislative auditor;

(d) one copy to each member of the legislature;

(e) two copies to the budget director;

(f) two copies to the librarian of the state historical society;

(g) at least four copies to the state publications distribution center of the state library and additional copies as requested by the state library;

(h) additional distribution in the discretion of the governor or state agency.

History: En. Sec. 2, Ch. 93, L. 1969; amd. Sec. 1, Ch. 134, L. 1971; R.C.M. 1947, 82-4002; amd. Sec. 1, Ch. 335, L. 1979.

2-7-103. Review by governor of executive branch — report to legislature. (1) The office of the governor shall continuously study and evaluate the organizational structure, management practices, and functions of the executive branch and of each agency. The governor shall, by executive order or other means within the authority granted to him, take action to improve the manageability of the executive branch.

(2) The governor shall submit a report to each regular legislative session concerning the duties of his office under subsection (1) of this section and his recommendations, if any, for the transfer of functions between agencies, the elimination of unnecessary functions, or other recommendations to improve the manageability of the executive branch.

History: En. 82-1315 by Sec. 1, Ch. 238, L. 1973; R.C.M. 1947, 82-1315.

Compiler's Comments

Temporary Section Made Permanent: This section was originally enacted as a temporary provision, since sec. 2, Ch. 238, L. 1973, provided that it would expire on June 30, 1975. Section 1, Ch. 207, L. 1975, repealed sec. 2, Ch. 238, L. 1973, thus rendering this section permanent.

2-7-104. Revenue estimate — report to governor and legislature. The director of revenue shall prepare revenue estimates of state revenue from all sources and shall continuously study fiscal problems and tax structures of state and local governments and submit the studies to the governor and legislature at their request.

History: En. 82A-1804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 64, Ch. 391, L. 1973; R.C.M. 1947, 82A-1804(part).

2-7-105. Tax information submitted. It shall be the duty of all public officers of the state and of any municipality to give to the department of revenue information in their possession relating to taxation when required by the department and cooperate with and aid the department in every manner in its efforts to secure a fair, equitable, and just enforcement of the taxation and revenue laws of the state.

History: En. Sec. 15, Ch. 3, L. 1923; re-en. Sec. 2122.15, R.C.M. 1935; amd. Sec. 8, Ch. 516, L. 1973; R.C.M. 1947, 84-715.

Parts 2 through 4 reserved

Part 5

Audits of Political Subdivisions

Part Compiler's Comments

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in Title 2, chapter 7, part 5 . . . are transferred to the department of administration."

2-7-501. Definition. Unless the context requires otherwise, in this part "department" means the department of administration.

History: En. 82-4515 by Sec. 1, Ch. 380, L. 1975; R.C.M. 1947, 82-4515; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs".

2-7-502. Audit purpose. The purpose of the audit of the affairs of the governmental entities as set forth in this part shall be to insure constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished, that the financial condition and operations of the entities are reasonably conducted and reported, that the stewardship of such entities is conducted in such a manner as to preserve and protect the public trust, and to accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public.

History: En. 82-4517 by Sec. 3, Ch. 380, L. 1975; R.C.M. 1947, 82-4517.

2-7-503. Audits of local governmental entities. (1) The department shall audit the affairs of all:

(a) counties;

(b) incorporated cities and towns;

(c) first- and second-class school districts and third-class school districts that maintain a high school;

(d) school district extracurricular fund for pupil functions;

(e) irrigation districts;

(f) conservancy districts;

(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy; and

(h) fire department relief associations.

(2) Each audit shall be made every 2 years and shall cover the immediately preceding 2 fiscal years of the governmental entity, unless annual audits are requested by the governmental entity.

(3) Each audit shall be initiated not later than 24 months from the close of the fiscal year for which the audit is conducted.

(4) In addition to the audits required by this section, the department may at any time conduct a special audit of the affairs of any governmental entity referred to in this part.

(5) The fee for the special audit shall be a charge based upon the costs incurred by the department in the conduct of such special audit. The audit fee herein provided shall be paid by the governmental entity to the state treasurer and deposited in the revolving fund to the credit of the department.

History: En. 82-4516, 82-4529 by Secs. 2, 15, Ch. 380, L. 1975; R.C.M. 1947, 82-4516(1) thru (3), 82-4529; amd. Sec. 1, Ch. 336, L. 1979; amd. Sec. 1, Ch. 573, L. 1981.

Compiler's Comments

1981 Amendment: In (1), made minor changes in phraseology; in (2), substituted "every 2 years" for "annually", substituted "2 fiscal years" for "fiscal year", and inserted "unless annual audits are requested by the governmental entity"; in (3), deleted "annual" after "Each", and substituted "24 months" for "12 months"; and in (5), substituted "deposited in the revolving fund to the credit of the department" for "credited to the state general fund".

Appropriation: Section 8, Ch. 573, L. 1981, provided: "There is appropriated $157,500 from the general fund to the department of community affairs, or if Senate Bill 432, introduced in the 47th legislature, is passed and approved, to the department of administration for the purpose of meeting initial costs associated with the audits of local governmental entities."

Effective Date: Section 10, Ch. 573, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

2-7-504. Accounting methods. The department shall prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to governmental entities referred to in this part and shall establish in those offices general methods and details of accounting. All governmental entity officers shall conform with the standards prescribed by the department.

History: En. 82-4530 by Sec. 16, Ch. 380, L. 1975; R.C.M. 1947, 82-4530.

2-7-505. Audit scope and standards. (1) Each audit shall be a comprehensive audit of the affairs of the governmental entity, including comment on the balance sheet, results of operations, compliance with state statutes and regulations, recommendations for improvement, and any other comments deemed pertinent by the auditor, including his expression of opinion as to the adequacy of the financial presentations.

(2) Each such audit required shall be made in accordance with generally accepted governmental auditing standards.

History: En. 82-4518 by Sec. 4, Ch. 380, L. 1975; R.C.M. 1947, 82-4518; amd. Sec. 2, Ch. 573, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "annual" before "audit" in (1) and (2).

Effective Date: Section 10, Ch. 573, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

2-7-506. Audit by independent accountant or auditor. (1) In lieu of the audits required of the department, the department may, with the consent of or at the request of the respective governmental entities, contract out such audits with a public accountant or firm of public accountants who are licensed under the laws of Montana.

(2) The department shall establish rules governing the administration of the contracts between the department, the independent accountant/auditor, and the governmental entities. These rules shall include but not be limited to:

(a) establishment of criteria for the selection of the independent accountant/auditor;

(b) contract form and content; and

(c) standards of audit and reporting.

History: En. 82-4525 by Sec. 11, Ch. 380, L. 1975; R.C.M. 1947, 82-4525; amd. Sec. 3, Ch. 573, L. 1981.

Compiler's Comments

1981 Amendment: In (1), deleted "annual" before "audits" in two places.

Appropriation: Section 8, Ch. 573, L. 1981, provided: "There is appropriated $157,500 from the general fund to the department of community affairs, or if Senate Bill 432, introduced in the 47th legislature, is passed and approved, to the department of administration for the purpose of meeting initial costs associated with the audits of local governmental entities."

Effective Date: Section 10, Ch. 573, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

2-7-507. Duty of officers to aid in audit. The officers and employees of the governmental entities referred to in this part shall afford all reasonable facilities for the department's audit and shall furnish information to the department under oath in a manner prescribed by the department.

History: En. 82-4527 by Sec. 13, Ch. 380, L. 1975; R.C.M. 1947, 82-4527.

2-7-508. Power to examine books and papers. The department may examine any books, papers, accounts, and documents in the office or possession of any governmental entity referred to in this part and may send for persons or papers and examine under oath any person concerning them.

History: En. 82-4528 by Sec. 14, Ch. 380, L. 1975; R.C.M. 1947, 82-4528.

2-7-509 and 2-7-510 reserved.

2-7-511. Access to public accounts — suspension of officer in case of discrepancy. (1) The department may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts it is examining under law.

(2) If an officer of any county, city, town, school, or other governmental entity referred to in this part refuses to accord the department access during an audit of the officer's accounts to his cash, bank accounts, or any of the papers, vouchers, or records of his office or if the department finds a shortage of cash, the department shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the governmental entity.

(3) Upon filing of the statement, the officer shall immediately be suspended from the duties and emoluments of his office and the governing body of such governmental entity shall appoint some qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the department, if a shortage of cash existed in the accounts of the officer, the department shall file with the governing body of the governmental entity a final report of the audit, showing the shortage. The governing body shall, within 10 days after the filing of the department's final report of the audit, set a date and time for a formal hearing to test the accuracy of the final report of the audit and give notice of the hearing to the officer.

(5) If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's

right to the office is forfeited and the report of the audit shall be referred to the county attorney.

History: **En. 82-4526 by Sec. 12, Ch. 380, L. 1975; R.C.M. 1947, 82-4526; amd. Sec. 1, Ch. 43, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted the last sentence of (4) and subsection (5) for language that provided for immediate forfeiture of office, appointment of successor, and right to quo warranto to test final audit report.

2-7-512. Exit review conference. Upon completion of the field work of each audit, the in-charge auditor is required to hold with the appropriate officials an exit review conference in which the audit results shall be discussed.

History: **En. 82-4519 by Sec. 5, Ch. 380, L. 1975; R.C.M. 1947, 82-4519.**

2-7-513. Content of audit report. The audit reports shall contain but are not limited to the following:

(1) financial statements that conform with the generally accepted governmental accounting principles and which, insofar as possible, present the financial position and results of financial operations for each fund of the governmental entity;

(2) an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor should be stated.

(3) a statement that previously noted deficiencies or recommendations contained in previous audit reports have been acted upon by adoption as recommended, adoption with modification, or rejection; and

(4) disclosure of any lack of compliance with state statutes or regulations, as well as any operating deficiencies or recommendations for improvement.

History: **En. 82-4520 by Sec. 6, Ch. 380, L. 1975; R.C.M. 1947, 82-4520.**

2-7-514. Issuance and filing of audit report. (1) Within 60 days after the completion of the field work, the department shall issue audit reports as follows:

(a) county audit reports to county commissioners, the county clerk and recorder, and the county attorney;

(b) city or town audit reports to the city or town governing body, the city or town chief financial officer, the city or town chief executive, and the city or town attorney;

(c) school district audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the clerk of the school district;

(d) school district extracurricular fund audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the fund administrator;

(e) fire district or volunteer fire department audit reports to the trustees, the county attorney, and the clerk and recorder of the county in which the fire district or fire department is located;

(f) conservancy district audit reports to the board of directors, the department of natural resources and conservation, the district court, and the county attorney(s);

(g) fire department relief association audit reports to the trustees, the city or town attorney, and the respective city or town clerk; and

(h) irrigation district audit reports to the board of commissioners, the district court, and the county attorney(s).

(2) All audit reports issued by the department are to be maintained on file at an appropriate location and open to public inspection.

History: En. 82-4521 by Sec. 7, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(1), (3).

2-7-515. Actions by governing bodies. (1) Upon receipt of the audit report, the governing bodies of each audited entity shall review the contents and within 30 days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification shall not be required.

(2) Notification to the department shall include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

(3) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. The county, city, or town attorney shall report to the department within 30 days after receiving the audit report from the department the proceedings instituted or to be instituted relating to the violations of law and nonperformance of duty. If the county, city, or town attorney fails or refuses to prosecute the case, the department may employ an attorney to prosecute the case at the expense of the respective governmental entity.

History: En. 82-4521, 82-4522 by Secs. 7, 8, Ch. 380, L. 1975; R.C.M. 1947, 82-4521(2), 82-4522.

2-7-516. Audit fees. (1) The department shall charge audit fees based upon the costs incurred by the department in the administration of this part.

(2) All audit fees herein provided shall be paid by the governmental entity to the state treasurer and deposited in the revolving fund to the credit of the department.

(3) The department may submit a bill to the governmental entity based upon the estimated percentage of completion of any audit. The governmental entity must make payment within 60 days of receiving a bill.

History: En. 82-4524 by Sec. 10, Ch. 380, L. 1975; R.C.M. 1947, 82-4524; amd. Sec. 4, Ch. 573, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "administration of this part" for "conduct of each annual audit, except as follows:" [followed by a list of audit fees]; in (2), substituted "deposited in the revolving fund to the credit of the department" for "credited to the state general fund"; and added subsection (3).

Effective Date: Section 10, Ch. 573, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

2-7-517. Penalty. When a governmental entity has failed to make payment as required by [2-7-516] within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the governmental entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment shall be released and paid to the governmental entity.

History: En. Sec. 6, Ch. 573, L. 1981.

Compiler's Comments

Appropriation: Section 8, Ch. 573, L. 1981, provided: "There is appropriated $157,500 from the general fund to the department of community affairs, or if Senate Bill 432, introduced in the 47th legislature, is passed and approved, to the department of administration for the purpose of meeting initial costs associated with the audits of local governmental entities."

Codification: Section 9, Ch. 573, L. 1981, provided: "Sections 6 and 7 [2-7-517 and 2-7-518] are intended to be codified as an integral part of Title 2, chapter 7, part 5."

Effective Date: Section 10, Ch. 573, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Commissioner Correction: The penalty section made erroneous reference to 2-15-516. There is no such section, but 2-7-516 appears to be the section intended to be cited.

2-7-518. Deposit of audit fees. All audit fees received from governmental entities after June 30, 1981, shall be deposited in the revolving fund to the credit of the department of administration for administration of Title 2, chapter 7, part 5.

History: En. Sec. 7, Ch. 573, L. 1981.

Compiler's Comments

Codification: Section 9, Ch. 573, L. 1981, provided: "Sections 6 and 7 [2-7-517 and 2-7-518] are intended to be codified as an integral part of Title 2, chapter 7, part 5."

Effective Date: Section 10, Ch. 573, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

2-7-519 and 2-7-520 reserved.

2-7-521. Publication. After the expiration of the 30-day period provided for in 2-7-515(1), the department shall send a copy of the general comments section of each annual audit report to a newspaper of general circulation for publication. However, the general comments section of each annual county audit report shall be sent to the official newspaper of the county for publication. The publication shall include a statement to the effect that the audit report is on file in its entirety and open to public inspection. Publication costs shall be borne by the audited governmental entity.

History: En. 82-4523 by Sec. 9, Ch. 380, L. 1975; R.C.M. 1947, 82-4523.

CHAPTER 8

LEGISLATIVE REVIEW

Part 1 — Periodic Agency Evaluation

Section

2-8-101. Purpose.
2-8-102. Definitions.
2-8-103. Agencies to terminate.
2-8-104. Termination of future regulatory agencies.
Sections 2-8-105 through 2-8-110 reserved.
2-8-111. Prereview agency responsibilities.
2-8-112. Legislative audit committee review and report — review criteria.
2-8-113. Hearings by standing committee — criteria for termination.
Sections 2-8-114 through 2-8-120 reserved.

2-8-121. Effect of termination.
2-8-122. Reestablishment.

Part 1

Periodic Agency Evaluation

2-8-101. Purpose. (1) The legislature finds state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules. The legislature questions whether conditions causing the establishment of these agencies, programs, and rules have not changed to such an extent as to remove the need for some or all of the agencies, programs, and rules.

(2) It is the intent of the legislature, by establishing a system of periodic evaluation of the need for and the performance of agencies preparatory to termination, modification, or reestablishment, to be in a better position to ensure as follows:

(a) The executive department is responsive to the needs of all of the people of the state.

(b) No agency, program, or rule exists which is not responsive to those needs.

(c) No profession, occupation, business, industry, or other endeavor is subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

(d) The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market.

(e) There exists a systematic legislative review of the need for and public benefits derived from a program or function which licenses or otherwise regulates a profession, occupation, business, industry, or other endeavor by a periodic review and termination, modification, or reestablishment of such programs and functions.

History: En. 82-4601 by Sec. 1, Ch. 562, L. 1977; R.C.M. 1947, 82-4601.

2-8-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive department of state government.

(2) "Performance audit" means an examination of the effectiveness of administration and its efficiency and adequacy in terms of the program of a state agency authorized by law to be performed and the conformance of expenditures with legislative intent. Audits conducted shall include an analysis of the operation of the agency with special regard to the duplication of efforts between the audited agency and other agencies and the quality of service being rendered.

History: En. 82-4602 by Sec. 2, Ch. 562, L. 1977; R.C.M. 1947, 82-4602.

2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of commerce, created by 2-15-1812;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of commerce, created by 2-15-1881;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of commerce, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of commerce, created by 2-15-1862.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

(5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

History: En. 82-4603 by Sec. 3, Ch. 562, L. 1977; R.C.M. 1947, 82-4603; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2, Ch. 321, L. 1979; amd. Sec. 2, Ch. 325, L. 1979; amd. Sec. 8, Ch. 351, L. 1979; amd. Sec. 2, Ch. 364, L. 1979; amd. Sec. 2, Ch. 388, L. 1979; amd. Sec. 2, Ch. 408, L. 1979; amd. Sec. 2, Ch. 439, L. 1979; amd. Sec. 1, Ch. 462, L. 1979; amd. Sec. 2, Ch. 491, L. 1979; amd. Sec. 2, Ch. 546, L. 1979; amd. Sec. 2, Ch. 549, L. 1979; amd. Sec. 2, Ch. 655, L. 1979; amd. Sec. 2, Ch. 684, L. 1979; amd. Sec. 2, Ch. 96, L. 1981; amd. Sec. 2, Ch. 106, L. 1981; amd. Sec. 2, Ch. 149, L. 1981; amd. Sec. 2, Ch. 154, L. 1981; amd. Sec. 2, Ch. 155, L. 1981; amd. Sec. 2, Ch. 243, L. 1981; amd. Sec. 2, Ch. 248, L. 1981; amd. Sec. 2, Ch. 292, L. 1981; amd. Sec. 2, Ch. 307, L. 1981; amd. Sec. 2, Ch. 323, L. 1981; amd. Sec. 2, Ch. 324, L. 1981; amd. Sec. 2, Ch. 326, L. 1981; amd. Sec. 2, Ch. 362, L. 1981; amd. Sec. 2, Ch. 363, L. 1981; amd. Sec. 2, Ch. 378, L. 1981; amd. Sec. 2, Ch. 444, L. 1981; amd. Sec. 2, Ch. 543, L. 1981; amd. Sec. 2, Ch. 544, L. 1981.

Compiler's Comments

1981 Amendments: The following were reestablished by deletion from subsection (2) and addition to subsection (5): Commission for Human Rights, Ch. 307; Montana State Board of Medical Examiners, Ch. 243; Board of Dentistry, Ch. 363; Board of Pharmacists, Ch. 362; Board of Nursing, Ch. 248; Board of Nursing Home Administrators, Ch. 154; Board of Optometrists, Ch. 543; Board of Chiropractors, Ch. 155; Board of Radiologic Technologists, Ch. 292; Board of Speech Pathologists and Audiologists, Ch. 326; Board of Hearing Aid Dispensers, Ch. 444, Board of Psychologists, Ch. 324, Board of Veterinarians, Ch. 96; Board of Morticians, Ch. 378; Board of Barbers, Ch. 544; Board of Cosmetologists, Ch. 106; Board of Sanitarians, Ch. 149; and Board of Veterans' Affairs, Ch. 323.

Chapter 274, creating the department of commerce, reallocated many boards and instructed the Code Commissioner to change department names and references accordingly. The boards allocated to the department of commerce in subsections (3) through (5) were changed accordingly. See part compiler's comments at Title 2, chapter 15, part 18, concerning the creation of the department of commerce and reallocation of boards.

1981 Effective Dates: All 1981 amendments, except Ch. 292, were effective on passage and approval. For exact date see applicable chapter in 1981 Session Laws.

Commissioner Correction: Grammatical changes were made in the lead-in of subsection (5) to accommodate reference to all the boards and commissions in one list.

Biennial Report of Auditor: For a listing of 1980 sunset review reports, see 7th Biennial Report, Legislative Auditor, State of Montana, December 1980.

2-8-104. Termination of future regulatory agencies. Any agency or program created in part to regulate any profession, occupation, business, or other endeavor by law enacted after January 1, 1977, shall terminate on July 1 of the year of the third regular biennial legislative session following enactment of such law. Any such agency or program shall be reviewed as required in 2-8-111 through 2-8-122, and such review shall be completed prior to the convening of the third regular biennial legislative session following enactment of such law.

History: **En. 82-4609 by Sec. 9, Ch. 562, L. 1977; R.C.M. 1947, 82-4609.**

2-8-105 through 2-8-110 reserved.

2-8-111. Prereview agency responsibilities. An agency designated by 2-8-103 or 2-8-104 for termination shall by 22 months preceding the date set for termination:

(1) delineate goals of programs for which it is responsible, which goals reflect the state's constitution, statutes, and authoritative judicial, legislative, and executive decisions or pronouncements;

(2) delineate objectives of programs and layout clearly enough to be tested, the logic in the assumptions linking expenditures to outcome anticipated, outcome anticipated to objectives, and objectives to impact on problems addressed in goals.

History: **En. 82-4605 by Sec. 5, Ch. 562, L. 1977; R.C.M. 1947, 82-4605.**

2-8-112. Legislative audit committee review and report — review criteria. (1) The legislative audit committee is responsible for having conducted a review of each agency scheduled for termination by 2-8-103. The review shall be completed at least 6 months prior to the date set for termination.

(2) The review conducted shall include a performance audit of the agency and a thorough examination of the following:

(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety, or welfare?

(c) Is there another less restrictive method of regulation available which could adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are all facets of the regulatory process designed solely for the purpose of and have as their primary effect the protection of the public?

(3) The legislative audit committee shall assist in the implementation of the provisions of this part and shall establish administrative procedures which facilitate the review and evaluation as required in this part.

(4) Upon completion of its review, the legislative audit committee shall make a report of its recommendations for continuation, modification, or termination and submit a proposed bill for the ensuing legislative session. If termination is recommended, the bill should repeal or otherwise deal with all statutes and parts of statutes for which the agency reviewed is responsible.

History: En. 82-4604 by Sec. 4, Ch. 562, L. 1977; R.C.M. 1947, 82-4604.

2-8-113. Hearings by standing committee — criteria for termination. (1) Prior to abolishment of an agency terminated by 2-8-103 or 2-8-104, the appropriate standing committee in each house of the legislature or a joint committee of both houses composed of members of the standing committee assigned to conduct the hearing shall hold a public hearing, receiving testimony from the public and the head of the department to which the agency involved is attached, the head of the agency involved, and persons who conducted the review.

(2) In the event termination is recommended by the legislative audit committee, the agency has the burden of demonstrating a public need for its continued existence and the extent to which a change in the composition, structure, and operation of the agency would increase the protection of the public health, safety, or welfare from harm or damage or decrease the adverse effect on the competitive market.

(3) In determining whether to reestablish an agency, the legislature shall consider the performance audit and review conducted by the legislative audit committee, the public testimony responsive to the questions set forth in subsection (2) of 2-8-112, and other matters considered relevant by the committee.

History: En. 82-4606 by Sec. 6, Ch. 562, L. 1977; R.C.M. 1947, 82-4606.

2-8-114 through 2-8-120 reserved.

2-8-121. Effect of termination. Unless otherwise provided, upon termination, each agency or unit shall continue in existence until July 1 of the next succeeding year for the purpose of winding up its affairs. During the windup period, termination does not reduce or otherwise limit the powers or authority of each respective agency except that no action may be taken which would continue in effect beyond the 1-year windup period. Upon the expiration of the 1 year after termination, each agency not modified or reestablished shall be abolished and all unexpended balances of appropriations, allocations, or other funds shall revert to the fund from which they were appropriated or, if that fund is abolished, to the general fund.

History: En. 82-4607 by Sec. 7, Ch. 562, L. 1977; R.C.M. 1947, 82-4607; amd. Sec. 2, Ch. 497, L. 1979.

Compiler's Comments

Nonapplicability: Section 7, Ch. 87, L. 1981, provided: "This act is effective July 1, 1981, and the provisions of 2-8-121 do not apply to the board of osteopathic physicians."

2-8-122. Reestablishment. (1) Any agency scheduled for termination under this part or any subsequent act may be reestablished by the legislature for any period of time specified by law, not to exceed 6 years, at the end of which time the legislature shall again review the agency pursuant to 2-8-112 and may again reestablish, modify, or allow the termination of the agency pursuant to this section.

(2) No more than one agency may be continued or reestablished in any bill for an act, and the agency shall be mentioned in the bill's title.

History: En. 82-4608 by Sec. 8, Ch. 562, L. 1977; R.C.M. 1947, 82-4608.

CHAPTER 9

LIABILITY EXPOSURE AND INSURANCE COVERAGE

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Part 1

Liability Exposure

2-9-101. Definitions. (1) As used in parts 1 through 3 of this chapter, the following definitions apply:

(a) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state.

(b) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(c) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(d) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(e) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(f) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(g) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof.

(2) As used in 2-9-104, the following definitions apply:

(a) "Economic damages" means tangible pecuniary losses.

(b) "Noneconomic damages" means those damages not included in economic, punitive, or exemplary damages including, without limitation, damages for pain and suffering, loss of consortium, mental distress, and loss of reputation.

History: (1)En. Sec. 2, Ch. 380, L. 1973; Sec. 82-4302, R.C.M. 1947; (2)En. 82-4334 by Sec. 8, Ch. 189, L. 1977; Sec. 82-4334, R.C.M. 1947; R.C.M. 1947, 82-4302, 82-4334(3).

2-9-102. Governmental entities liable for torts except as specifically provided by legislature. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function except as specifically provided by the legislature under Article II, section 18, of The Constitution of the State of Montana.

History: En. Sec. 10, Ch. 380, L. 1973; amd. Sec. 1, Ch. 189, L. 1977; R.C.M. 1947, 82-4310.

2-9-103. Actions under invalid law or rule — same as if valid — when. (1) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, neither he nor any other officer or employee of the governmental entity he represents nor the governmental entity he represents is civilly liable in any action in which he, such other officer, or such governmental entity would not have been liable had the law been valid.

(2) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, neither he nor any other officer, agent, or employee of the governmental entity he represents nor the governmental entity he represents is civilly liable in any action in which no liability would attach had the rule or ordinance been valid.

History: En. 82-4333 by Sec. 7, Ch. 189, L. 1977; R.C.M. 1947, 82-4333; amd. Sec. 7, Ch. 184, L. 1979.

2-9-104. Limitation on governmental liability for damages in tort — petition for relief in excess of limits. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for:

(a) noneconomic damages; or

(b) economic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $300,000 for each claimant and $1 million for each occurrence.

(2) The legislature or the governing body of a county, municipality, taxing district, or other political subdivision of the state may, in its sole discretion, authorize payments for noneconomic damages or economic damages in excess of the sum authorized in subsection (1)(b) of this section, or both, upon petition of plaintiff following a final judgment. No insurer is liable for such noneconomic damages or excess economic damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of the limitation stated in this section or specifically agrees to provide coverage for noneconomic damages, in which case the insurer may not claim the benefits of the limitation specifically waived.

History: En. 82-4334 by Sec. 8, Ch. 189, L. 1977; R.C.M. 1947, 82-4334(1), (2); amd. Sec. 2, Ch. 425, L. 1979.

2-9-105. State or other governmental entity immune from exemplary and punitive damages. The state and other governmental entities are immune from exemplary and punitive damages.

History: En. 82-4332 by Sec. 6, Ch. 189, L. 1977; R.C.M. 1947, 82-4332.

2-9-106 through 2-9-110 reserved.

2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

(b) the term "legislative body" includes the legislature vested with legislative power by Article V of The Constitution of the State of Montana and any local governmental entity given legislative powers by statute, including school boards.

(2) A governmental entity is immune from suit for an act or omission of its legislative body or a member, officer, or agent thereof.

(3) A member, officer, or agent of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with the introduction or consideration of legislation or action by the legislative body.

(4) The immunity provided for in this section does not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation.

History: En. 82-4328 by Sec. 2, Ch. 189, L. 1977; R.C.M. 1947, 82-4328.

2-9-112. Immunity from suit for judicial acts and omissions. (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from his lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

History: En. 82-4329 by Sec. 3, Ch. 189, L. 1977; R.C.M. 1947, 82-4329.

2-9-113. Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.

History: En. 82-4330 by Sec. 4, Ch. 189, L. 1977; R.C.M. 1947, 82-4330.

2-9-114. Immunity from suit for certain actions by local elected executives. A local governmental entity and the elected executive officer thereof are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body.

History: En. 82-4331 by Sec. 5, Ch. 189, L. 1977; R.C.M. 1947, 82-4331.

Part 2

Comprehensive State Insurance Plan

2-9-201. Comprehensive insurance plan for state. (1) The department of administration is responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined in 2-9-101.

(2) The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and may purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

(3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part.

(4) Only the department of administration may procure insurance under parts 1 through 3 of this chapter except as otherwise provided herein.

(5) All offices, departments, agencies, authorities, commissions, boards, institutions, hospitals, colleges, universities, and other instrumentalities of the state hereafter called state participants shall comply with parts 1 through 3 and the insurance plan developed by the department of administration.

History: (1) thru (3)En. Sec. 3, Ch. 380, L. 1973; amd. Sec. 1, Ch. 143, L. 1974; amd. Sec. 1, Ch. 360, L. 1977; Sec. 82-4303, R.C.M. 1947; (4), (5)En. Sec. 4, Ch. 380, L. 1973; Sec. 82-4304, R.C.M. 1947; R.C.M. 1947, 82-4303, 82-4304.

2-9-202. Apportionment of costs — creation of deductible reserve. (1) The department of administration shall apportion the costs of all insurance purchased under 2-9-201 to the individual state participants, and the costs shall be paid to the department subject to appropriations by the legislature.

(2) The department, if it elects to utilize a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan until such time as a deductible reserve is established. In each subsequent year, the department may charge a sufficient amount over the actual cost of the deductible insurance to replenish such deductible reserves.

(3) The department may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion the department considers should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that purpose. Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund.

History: En. Sec. 5, Ch. 380, L. 1973; amd. Sec. 2, Ch. 360, L. 1977; R.C.M. 1947, 82-4305.

2-9-203 through 2-9-210 reserved.

2-9-211. Political subdivision insurance. (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose. Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund.

History: En. Sec. 6, Ch. 380, L. 1973; amd. Sec. 3, Ch. 360, L. 1977; R.C.M. 1947, 82-4306.

2-9-212. Political subdivision tax levy to pay premiums. Notwithstanding any provisions of law to the contrary, all political subdivisions may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby, provided that the revenues derived therefrom may not be used for any other purpose.

History: En. Sec. 9, Ch. 380, L. 1973; amd. Sec. 4, Ch. 360, L. 1977; R.C.M. 1947, 82-4309.

Part 3

Claims and Actions

2-9-301. Filing of claims against state and political subdivisions. (1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter shall be presented to and filed with the department of administration.

(2) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision.

History: (1)En. Sec. 11, Ch. 380, L. 1973; amd. Sec. 1, Ch. 361, L. 1975; amd. Sec. 5, Ch. 360, L. 1977; Sec. 82-4311, R.C.M. 1947; (2)En. Sec. 12, Ch. 380, L. 1973; amd. Sec. 6, Ch. 360, L. 1977; Sec. 82-4312, R.C.M. 1947; R.C.M. 1947, 82-4311, 82-4312.

2-9-302. Time for filing — limitation of actions. A claim against the state or a political subdivision is subject to the limitation of actions provided by law.

History: En. 82-4312.1 by Sec. 7, Ch. 360, L. 1977; R.C.M. 1947, 82-4312.1.

2-9-303. Compromise or settlement of claim against state. The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge must approve the compromise settlement.

History: En. Sec. 19, Ch. 380, L. 1973; amd. Sec. 9, Ch. 360, L. 1977; R.C.M. 1947, 82-4319; amd. Sec. 1, Ch. 63, L. 1981.

Compiler's Comments

1981 Amendment: Added the final phrase to authorize district courts other than those of first judicial district to compromise claims.

2-9-304. Compromise or settlement of claim against political subdivision. The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of the insurance, if any. A settlement involving a self-insurance reserve fund or deductible reserve fund must be approved by the district court where the claim is filed.

History: **En. Sec. 18, Ch. 380, L. 1973; amd. Sec. 8, Ch. 360, L. 1977; R.C.M. 1947, 82-4318.**

2-9-305. Governmental entity to be joined as defendant — immunization and indemnification of employees. (1) It is the purpose of this section to provide for the immunization and indemnification of public officers and employees sued for their actions, other than intentional tort or felonious acts, taken within the course and scope of their employment.

(2) In an action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission or other actionable conduct of the employee committed while acting within the course and scope of his office or employment, the governmental entity employer shall be made a party defendant to the action.

(3) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter shall constitute a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit shall be immune from suit by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of such employees' employment, unless the claim is based upon an intentional tort or felonious act of the employee.

(4) In any action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the governmental entity employer for any money judgments or legal expenses to which he may be subject as a result of the suit unless the conduct upon which the claim is brought did not arise out of the course and scope of his employment or is an intentional tort or felonious act of the employee.

History: **(1)En. 82-4322.1 by Sec. 1, Ch. 239, L. 1974; Sec. 82-4322.1, R.C.M. 1947; (2) thru (4)En. Sec. 23, Ch. 380, L. 1973; amd. Sec. 2, Ch. 239, L. 1974; Sec. 82-4323, R.C.M. 1947; R.C.M. 1947, 82-4322.1, 82-4323.**

2-9-306. Construction of policy conditions — customary exclusions. Any insurance policy, rider, or endorsement issued and purchased after July 1, 1973, to insure against any risk which may arise as a result of the application of parts 1 through 3 of this chapter which contains any condition or provision not in compliance with the requirements of parts 1 through 3 shall not be rendered invalid thereby but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with parts 1 through 3, provided the policy is otherwise valid. This section may not be construed to prohibit any such insurance policy, rider, or endorsements from containing standard and customary exclusions of coverages that the department of administration considers reasonable and prudent upon considering the availability and the cost of such insurance coverages.

History: **En. Sec. 8, Ch. 380, L. 1973; R.C.M. 1947, 82-4308; amd. Sec. 8, Ch. 184, L. 1979.**

2-9-307 through 2-9-310 reserved.

2-9-311. Jurisdiction of district court — rules of procedure. The district court shall have jurisdiction over any action brought under parts 1 through 3 of this chapter, and such actions shall be governed by the Montana Rules of Civil Procedure insofar as they are consistent with such parts.

History: En. Sec. 20, Ch. 380, L. 1973; R.C.M. 1947, 82-4320.

2-9-312. Venue of actions. (1) Actions against the state shall be brought in the county in which the cause of action arose or in Lewis and Clark County. In addition, a resident of the state may bring an action in the county of his residence.

(2) Actions against a political subdivision shall be brought in the county in which the cause of action arose or in any county where the political subdivision is located.

History: En. Sec. 21, Ch. 380, L. 1973; R.C.M. 1947, 82-4321.

2-9-313. Service of process on state. In all actions against the state, the state shall be named the defendant, and the summons and complaint shall be served on the director of the department of administration in addition to service required by Rule 4D(2)(h), M.R.Civ.P.

History: En. Sec. 22, Ch. 380, L. 1973; R.C.M. 1947, 82-4322; amd. Sec. 1, Ch. 604, L. 1979.

2-9-314. Court approval of attorney's fee. (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision thereof, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the attorney's fee in any tort claim against the state or a political subdivision thereof. In regulating the amount of the fee, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) Attorneys' fees regulated under this section shall be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney's fees under this section, he forfeits the right to any fee which he may have collected or been entitled to collect.

History: En. 82-4316.1 by Sec. 1, Ch. 188, L. 1977; R.C.M. 1947, 82-4316.1.

2-9-315. Recovery from appropriations if no insurance. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of parts 1 through 3 of this chapter, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

History: En. Sec. 25, Ch. 380, L. 1973; R.C.M. 1947, 82-4325.

2-9-316. Judgments against governmental entities except state. A political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

(1) insurance;

(2) the general fund or any other funds legally available to the governing body;

(3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills;

(4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually.

History: **En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(1).**

2-9-317. No interest if judgment paid within two years. If a governmental entity pays a judgment within 2 years after the day on which the judgment is entered, no penalty or interest may be assessed against the governmental entity.

History: **En. 82-4335 by Sec. 10, Ch. 360, L. 1977; R.C.M. 1947, 82-4335(2).**

2-9-318. Attachment and execution. No levy of attachment or writ of execution shall issue against any property of a governmental entity for the security or collection of any claim or judgment against any governmental entity under parts 1 through 3 of this chapter.

History: **En. Sec. 28, Ch. 380, L. 1973; R.C.M. 1947, 82-4327.**

Part 4 reserved

Part 5

General Provisions Related to Official Bonds

2-9-501. Application — state official and employee bonds excepted. The provisions of this part apply to the bonds of county, town, or township officers; the official bond of any executor, administrator, guardian; or the bond or undertaking of any person where by law a bond or undertaking is required except state officers and employees.

History: **En. Sec. 1084, Pol. C. 1895; amd. Sec. 7, p. 82, L. 1899; re-en. Sec. 412, Rev. C. 1907; re-en. Sec. 503, R.C.M. 1921; Cal. Pol. C. Sec. 981; amd. Sec. 1, Ch. 17, L. 1935; re-en. Sec. 503, R.C.M. 1935; amd. Sec. 7, Ch. 134, L. 1941; amd. Sec. 8, Ch. 177, L. 1965; R.C.M. 1947, 6-331.**

2-9-502. Bonds of deputies. Every officer or body appointing a deputy, clerk, or subordinate officer may require an official bond to be given by the person appointed and may fix the amount thereof.

History: **En. Sec. 1088, Pol. C. 1895; re-en. Sec. 416, Rev. C. 1907; re-en. Sec. 507, R.C.M. 1921; Cal. Pol. C. Sec. 985; re-en. Sec. 507, R.C.M. 1935; R.C.M. 1947, 6-335.**

2-9-503. Bond of appointee. Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as herein provided.

History: En. Sec. 1074, Pol. C. 1895; re-en. Sec. 402, Rev. C. 1907; re-en. Sec. 493, R.C.M. 1921; Cal. Pol. C. Sec. 971; re-en. Sec. 493, R.C.M. 1935; R.C.M. 1947, 6-324.

2-9-504. Conditions, form, and signatures. (1) The condition of every official bond must be that the principal shall well, truly, and faithfully perform all official duties then required of him by law and also such additional duties as may be imposed on him by any law of the state subsequently enacted and that he will account for and pay over and deliver to the person or officer entitled to receive the same all moneys or other property that may come into his hands as such officer.

(2) The principal and sureties upon any official bond are also in all cases liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee appointed or employed by such principal.

(3) All official bonds must be signed and executed by the principal and two or more sureties or by the principal and one or more surety companies organized as such under the laws of this state or licensed to do business herein.

(4) All official bonds must be in form joint and several and made payable to the state of Montana in such penalty and with such conditions as required by this part or the law creating or regulating the duties of the office.

History: (1) thru (3)En. Sec. 1057, Pol. C. 1895; amd. Sec. 2, p. 79, L. 1899; re-en. Sec. 384, Rev. C. 1907; re-en. Sec. 475, R.C.M. 1921; Cal. Pol. C. Sec. 954; re-en. Sec. 475, R.C.M. 1935; Sec. 6-306, R.C.M. 1947; (4)En. Sec. 1061, Pol. C. 1895; re-en. Sec. 388, Rev. C. 1907; re-en. Sec. 479, R.C.M. 1921; Cal. Pol. C. Sec. 958; re-en. Sec. 479, R.C.M. 1935; Sec. 6-310, R.C.M. 1947; R.C.M. 1947, 6-306, 6-310.

2-9-505. Bonds of receivers, assignees — payable to state. All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and payable to the state and, upon the order of the court where such action or proceeding is pending, may be prosecuted for the benefit of any and all interested therein.

History: En. Sec. 1085, Pol. C. 1895; re-en. Sec. 413, Rev. C. 1907; re-en. Sec. 504, R.C.M. 1921; Cal. Pol. C. Sec. 982; re-en. Sec. 504, R.C.M. 1935; R.C.M. 1947, 6-332.

2-9-506. Approval, filing, record, and custody. (1) The approval of every official bond must be endorsed thereon and signed by the officer approving the same. No officer with whom any official bond is required to be filed must file such bond until approved.

(2) Every official bond must be filed in the proper office within the time prescribed for filing the oath unless otherwise expressly provided by statute.

(3) Official bonds must be recorded in a book kept for the purpose and entitled "Record of Official Bonds".

(4) Every officer with whom official bonds are filed must carefully keep and preserve the same and give certified copies thereof to any person demanding the same upon being paid the same fees as are allowable by law for certified copies of papers in other cases.

History: (1)Ap. p. Sec. 1055, Pol. C. 1895; re-en. Sec. 382, Rev. C. 1907; re-en. Sec. 473, R.C.M. 1921; Cal. Pol. C. Sec. 952; re-en. Sec. 473, R.C.M. 1935; Sec. 6-304, R.C.M. 1947; Ap. p. Sec. 1056,

Pol. C. 1895; re-en. Sec. 383, Rev. C. 1907; re-en. Sec. 474, R.C.M. 1921; Cal. Pol. C. Sec. 953; re-en. Sec. 474, R.C.M. 1935; Sec. 6-305, R.C.M. 1947; (2)En. Sec. 1050, Pol. C. 1895; re-en. Sec. 377, Rev. C. 1907; re-en. Sec. 468, R.C.M. 1921; Cal. Pol. C. Sec. 947; re-en. Sec. 468, R.C.M. 1935; Sec. 6-301, R.C.M. 1947; (3)En. Sec. 1054, Pol. C. 1895; re-en. Sec. 381, Rev. C. 1907; re-en. Sec. 472, R.C.M. 1921; Cal. Pol. C. Sec. 951; re-en. Sec. 472, R.C.M. 1935; Sec. 6-303, R.C.M. 1947; (4)En. Sec. 1060, Pol. C. 1895; re-en. Sec. 387, Rev. C. 1907; re-en. Sec. 478, R.C.M. 1921; Cal. Pol. C. Sec. 957; re-en. Sec. 478, R.C.M. 1935; Sec. 6-309, R.C.M. 1947; R.C.M. 1947, 6-301, 6-303, 6-304, 6-305, 6-309.

2-9-507. Sureties' qualifications. (1) The individual sureties on all official bonds must justify before an officer authorized to administer oaths by an affidavit to the effect that they are residents and householders or freeholders within the state and that each is worth the sum for which he becomes surety in said bond over and above his just debts and liabilities, exclusive of property exempt from execution.

(2) No surety company or corporation organized under or that has complied with the laws of this state and has been duly licensed to do business as such herein shall be required to justify as a surety. No such company or corporation shall be accepted as a surety in any case when its liabilities exceed its assets, as ascertained in the manner provided by law.

(3) No member of the board of county commissioners can be accepted as a surety upon the official bond of any county, township, or school district officer in his county, nor must any county officer become a surety upon the official bond of any other county officer.

History: En. Sec. 1058, Pol. C. 1895; amd. Sec. 3, p. 80, L. 1899; re-en. Sec. 385, Rev. C. 1907; re-en. Sec. 476, R.C.M. 1921; Cal. Pol. C. Sec. 955; re-en. Sec. 476, R.C.M. 1935; R.C.M. 1947, 6-307.

2-9-508 through 2-9-510 reserved.

2-9-511. Extent of sureties' liability — when less than full. (1) Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

(2) Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

(3) When the penal sum of any bond required to be given amounts to more than $1,000, the sureties may become severally liable for portions not less than $500, making in the aggregate a liability of double the amount named as the penal sum of the bond. If any such bond becomes forfeited, an action may be brought thereon against any or all of the obligors and judgment entered against them, either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribute to his cosureties in proportion to the amount for which he is liable.

History: (1)En. Sec. 1062, Pol. C. 1895; re-en. Sec. 389, Rev. C. 1907; re-en. Sec. 480, R.C.M. 1921; Cal. Pol. C. Sec. 959; re-en. Sec. 480, R.C.M. 1935; Sec. 6-311, R.C.M. 1947; (2)En. Sec. 1063,

Pol. C. 1895; re-en. Sec. 390, Rev. C. 1907; re-en. Sec. 481, R.C.M. 1921; Cal. Pol. C. Sec. 960; re-en. Sec. 481, R.C.M. 1935; Sec. 6-312, R.C.M. 1947; (3)En. Sec. 1059, Pol. C. 1895; amd. Sec. 1, p. 112, L. 1897; amd. Sec. 4, p. 80, L. 1899; re-en. Sec. 386, Rev. C. 1907; re-en. Sec. 477, R.C.M. 1921; Cal. Pol. C. Sec. 956; re-en. Sec. 477, R.C.M. 1935; Sec. 6-308, R.C.M. 1947; R.C.M. 1947, 6-308, 6-311, 6-312.

2-9-512. Defects not to affect liability. (1) Whenever an official bond does not contain the substantial matter or conditions required by law or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and sureties, but they are equitably bound to the state or party interested and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing and recover the proper and equitable demand or damages from such officer and the persons who intended to become and were included as sureties in such bond.

(2) No official bond entered into by any officer or any bond, recognizance, or written undertaking taken by any officer in the discharge of the duties of his office shall be void for want of form, substance, recital, or condition or the principal or surety be discharged. The principal and surety shall be bound by such bond, recognizance, or written undertaking to the full extent contemplated by the law requiring the same and the sureties to the amount specified in the bond or recognizance or written undertaking. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in his complaint and recover to the same extent as if such bond, recognizance, or written undertaking were perfect in all respects.

History: (1)En. Sec. 1066, Pol. C. 1895; re-en. Sec. 393, Rev. C. 1907; re-en. Sec. 484, R.C.M. 1921; Cal. Pol. C. Sec. 963; re-en. Sec. 484, R.C.M. 1935; Sec. 6-315, R.C.M. 1947; (2)En. Sec. 1, Ch. 193, L. 1907; re-en. Sec. 394, Rev. C. 1907; re-en. Sec. 485, R.C.M. 1921; re-en. Sec. 485, R.C.M. 1935; Sec. 6-316, R.C.M. 1947; R.C.M. 1947, 6-315, 6-316.

2-9-513. Insufficiency of sureties — action to vacate office. (1) Whenever it is shown by the affidavit of a credible witness or otherwise comes to the knowledge of the court, judge, board, person, or body whose duty it is to approve the official bond of any officer that the sureties on any bond given pursuant to the provisions of this part or any one of them have, since such bond was approved, died, removed from the state, become insolvent, or from any other cause have become incompetent or insufficient sureties on such bond, the court, judge, board, officer, or other person may issue a citation to such officer requiring him on a day therein named, not less than 5 or more than 10 days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases.

(2) If the officer fails to appear and show good cause why such office should not be vacated on the day named or fails to give ample additional security, the court, judge, board, officer, or other person must make an order vacating the office. The same must be filled as approved by law.

History: En. Sec. 1067; Pol. C. 1895; amd. Sec. 5, p. 81, L. 1899; re-en. Sec. 395, Rev. C. 1907; re-en. Sec. 486, R.C.M. 1921. Cal. Pol. C. Sec. 964; re-en. Sec. 486, R.C.M. 1935; R.C.M. 1947, 6-317.

2-9-514. Additional security. (1) The additional bond given pursuant to 2-9-513(2) must be in such penalty as directed by the court, judge, board, officer, or other person and in all other respects similar to the original bond and approved by and filed with the same officer as required in case of the approval and filing of the original bond.

(2) Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

(3) In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

History: (1), (2)En. Sec. 1068, Pol. C. 1895; re-en. Sec. 396, Rev. C. 1907; re-en. Sec. 487, R.C.M. 1921; Cal. Pol. C. Sec. 965; re-en. Sec. 487, R.C.M. 1935; Sec. 6-318, R.C.M. 1947; (3)En. Sec. 1069, Pol. C. 1895; re-en. Sec. 397, Rev. C. 1907; re-en. Sec. 488, R.C.M. 1921; Cal. Pol. C. Sec. 966; re-en. Sec. 488, R.C.M. 1935; Sec. 6-319, R.C.M. 1947; R.C.M. 1947, 6-318, 6-319; amd. Sec. 9, Ch. 184, L. 1979.

2-9-515. Additional security — liability of officers and sureties. The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds. Such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively. He may allege the same cause of action and recover judgment therefor in each suit.

History: En. Sec. 1070, Pol. C. 1895; re-en. Sec. 398, Rev. C. 1907; re-en. Sec. 489, R.C.M. 1921; Cal. Pol. C. Sec. 967; re-en. Sec. 489, R.C.M. 1935; R.C.M. 1947, 6-320.

2-9-516. Separate judgments. If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits.

History: En. Sec. 1071, Pol. C. 1895; re-en. Sec. 399, Rev. C. 1907; re-en. Sec. 490, R.C.M. 1921; Cal. Pol. C. Sec. 968; re-en. Sec. 490, R.C.M. 1935; R.C.M. 1947, 6-321.

2-9-517. Contribution between sureties. Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover in any court of competent jurisdiction of the sureties on the remaining bond a distributive part of the sum thus paid in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid, respectively.

History: En. Sec. 1072, Pol. C. 1895; re-en. Sec. 400, Rev. C. 1907; re-en. Sec. 491, R.C.M. 1921; Cal. Pol. C. Sec. 969; re-en. Sec. 491, R.C.M. 1935; R.C.M. 1947, 6-322.

2-9-518 through 2-9-520 reserved.

2-9-521. Discharge of sureties. Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done if such officer will execute a new bond in accordance with the provisions of this part in like form, penalty, and conditions, and to be approved and filed as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability, but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the principal and surety or sureties in such new bond is in all respects the same and may be enforced in like manner as the liability of the principal and sureties of the original bond.

History: En. Sec. 1073, Pol. C. 1895; amd. Sec. 6, p. 81, L. 1899; re-en. Sec. 401, Rev. C. 1907; re-en. Sec. 492, R.C.M. 1921; Cal. Pol. C. Sec. 970; re-en. Sec. 492, R.C.M. 1935; R.C.M. 1947; 6-323.

2-9-522. Release of sureties. Any surety on the official bond of any county, city, town, or township officer or on the official bond of any executor, administrator, guardian or on the bond or undertaking of any person where by law a bond or undertaking is required may be released from all liability thereon accruing from and after proper proceedings had therefor, as provided in this part.

History: En. Sec. 1075, Pol. C. 1895; re-en. Sec. 403, Rev. C. 1907; re-en. Sec. 494, R.C.M. 1921; Cal. Pol. C. Sec. 972; re-en. Sec. 494, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1941; amd. Sec. 6, Ch. 177, L. 1965; R.C.M. 1947, 6-325.

2-9-523. Proceedings to obtain release. (1) Any surety desiring to be released from liability on the bond of any county or township officer shall file a statement in writing, duly subscribed by himself or someone in his behalf setting forth the name and office of the person for whom he is surety, the amount for which he is liable as such, and his desire to be released from further liability on account thereof.

(2) A notice containing the object of such statement shall be served personally on the principal unless he shall have left the state or his whereabouts cannot after due and diligent search and inquiry be ascertained, in which case the same may be served by publication once a week for four successive publications in some newspaper of general circulation published in the county where the bond is filed on record. The statement, except when the county clerk or county commissioners are principals, shall be filed with the county clerk. When the county clerk or county commissioners are principals, the statement shall be filed with the district judge.

(3) Any surety desiring to be released from liability on the bond of any city or town officer shall file and serve a similar statement with the city or town clerk or mayor.

(4) Any surety desiring to be released from an executor's, administrator's, or guardian's bond or undertaking shall file and serve a similar statement with the proper officer, person, or authority where the bond is filed on record.

(5) All statements provided for in this section must be served personally on the principal as in this section provided if he can be found for service in the state; if not, he may be served by publication in a newspaper at the county seat as hereinbefore provided, or if no newspaper be published thereat, then in an adjoining county, without any order from any court or other authority. In all cases for which publication is provided, a printed or written notice posted in at least 10 conspicuous places in the county for the time specified for publication of said notice shall be deemed legal notice thereof.

History: En. Sec. 2, Ch. 134, L. 1941; amd. Sec. 7, Ch. 177, L. 1965; R.C.M. 1947, 6-326.

2-9-524. Amount of new bond — failure to file. (1) Whenever a statement is filed or filed and served as herein provided, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking shall be filed unless already provided by statute. If no such order be made, then such new or additional bond or undertaking shall be executed for the same amount as the original.

(2) If any officer or person shall fail to file within 20 days from the date of personal service or within 40 days from the date of the first publication or of posting notice, as provided herein, a new or additional bond or undertaking, the office or appointment of the person or officer so failing shall become vacant and such officer or person shall forfeit his office or appointment. The same shall be filled as in other cases of vacancy and in the manner provided by law.

(3) The person applying to be released from liability on such bond or undertaking shall not be holden or liable thereon after the date herein provided for the vacating and forfeiting of such office or appointment.

History: En. Secs. 3, 5, Ch. 134, L. 1941; R.C.M. 1947, 6-327, 6-329.

2-9-525. Liability of sureties when new bond is given. In case a new or additional undertaking be filed, the sureties on the original undertaking not asking to be released and on the new or additional bond or undertaking shall be and continue liable for the official acts of such officer or person, jointly and severally, the same as if all were sureties on one and the same instrument. This shall not be deemed to provide retroactive liability on the new surety.

History: En. Sec. 4, Ch. 134, L. 1941; R.C.M. 1947, 6-328.

2-9-526. Effect of discharge of sureties. No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before discharge of the surety as hereinbefore provided, but such legal proceedings may be had therefor in all respects as though no such discharge had been had.

History: En. Sec. 1083, Pol. C. 1895; re-en. Sec. 411, Rev. C. 1907; re-en. Sec. 502, R.C.M. 1921; Cal. Pol. C. Sec. 980; re-en. Sec. 502, R.C.M. 1935; amd. Sec. 6, Ch. 134, L. 1941; R.C.M. 1947, 6-330.

2-9-527. Suit on bonds. (1) Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity. Any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

(2) No such bond is void on the first recovery of a judgment thereon. Suit may be afterwards brought, from time to time, and judgment recovered thereon by the state or by any person to whom a right of action has accrued against such officer and his sureties until the whole penalty of the bond is exhausted.

History: (1)En. Sec. 1064, Pol. C. 1895; re-en. Sec. 391, Rev. C. 1907; re-en. Sec. 482, R.C.M. 1921; Cal. Pol. C. Sec. 961; re-en. Sec. 482, R.C.M. 1935; Sec. 6-313, R.C.M. 1947; (2)En. Sec. 1065, Pol. C. 1895; re-en. Sec. 392, Rev. C. 1907; re-en. Sec. 483, R.C.M. 1921; Cal. Pol. C. Sec. 962; re-en. Sec. 483, R.C.M. 1935; Sec. 6-314, R.C.M. 1947; R.C.M. 1947, 6-313, 6-314.

2-9-528. Lien on real estate of surety — action to compel specific performance. (1) When an action is commenced in any court in this state, for the benefit to the state, to enforce the penalty of or to recover money upon an official bond or obligation or any bond or obligation executed in favor of the state of Montana or of the people of this state, the attorney or other person prosecuting the action may file with the clerk of the court in which the action is commenced an affidavit stating either positively or on information and belief that such bond or obligation was executed by the defendant or one or more of the defendants (designating whom) and made payable to the people of the state or to the state and that the defendant or defendants have real estate or some interest in lands (designating the county or counties in which the same is situated) and that the action is prosecuted for the benefit of the state. The clerk of the court receiving such affidavit must certify to the county clerk in which such real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, with the date of the commencement of the suit.

(2) Upon receiving such certificate, the county clerk must endorse upon it the time of its reception. Such certificate must be filed in the same manner as notices of the pendency of action affecting real estate. Any judgment recovered in such action is a lien upon all real estate belonging to the defendant situated in any county in which such certificate is so filed or to one or more of such defendants, for the amount the owner thereof is or may be liable upon the judgment, from the filing of this certificate.

(3) In any action to compel the specific performance of an agreement to sell real estate affected by the lien created by the filing of the certificate mentioned in subsection (2) which agreement was made prior to the filing of such certificate, but the purchase price thereof is not due until after the filing of said certificate, the judge of the district court in which said action for specific performance is tried must, if the purchaser is otherwise entitled to specific performance of such agreement, order the said purchaser to pay the purchase price, or so much thereof as may be due, to the state treasurer, taking his receipt therefor. Upon such payment, the purchaser is entitled to enforce the specific performance of the agreement and take said real estate free from the liens created by the filing of said certificate. The moneys so paid to the state treasurer must be held by him, pending the litigation mentioned in said certificate and subject to the lien created by the filing of said certificate. If judgment is recovered against the defendant, the state treasurer in his settlement must pay to the county treasurer entitled to the same the amount due the county.

History: **(1)En. Sec. 1086, Pol. C. 1895; re-en. Sec. 414, Rev. C. 1907; re-en. Sec. 505, R.C.M. 1921; Cal. Pol. C. Sec. 983; re-en. Sec. 505, R.C.M. 1935; Sec. 6-333, R.C.M. 1947; (2)En. Sec. 1087, Pol. C. 1895; re-en. Sec. 415, Rev. C. 1907; re-en. Sec. 506, R.C.M. 1921; Cal. Pol. C. Sec. 984; re-en. Sec. 506, R.C.M. 1935; Sec. 6-334, R.C.M. 1947; (3)En. Sec. 1090, Pol. C. 1895; re-en. Sec. 418, Rev. C. 1907; re-en. Sec. 509, R.C.M. 1921; Cal. Pol. C. Sec. 987; re-en. Sec. 509, R.C.M. 1935; Sec. 6-337, R.C.M. 1947; R.C.M. 1947, 6-333, 6-334, 6-337.**

Part 6

Bonds of State Officers and Employees

2-9-601. Definition. As used in this part, the term "state officers and employees" does not include notaries public, supreme court justices, district court judges, or members and employees of the legislature.

History: **En. Sec. 1, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 6-105(part).**

2-9-602. Officers and employees to be bonded — coverage, form, amount. (1) All state officers and employees shall be bonded.

(2) A bond may cover an individual officer or employee or group of officers and employees. The form of all bonds shall be prescribed by the department of administration, subject to the approval of the attorney general.

(3) Before determining the amount for which a state officer or employee shall be bonded, the department of administration shall consult with the head of the institution or agency involved and the head of the agency responsible for the examination or post auditing of state agencies. The amount for which a state officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation.

History: (1), (2)En. Sec. 1, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; Sec. 6-105, R.C.M. 1947; (3)En. Sec. 2, Ch. 177, L. 1965; amd. Sec. 1, Ch. 326, L. 1974; Sec. 6-106, R.C.M. 1947; R.C.M. 1947, 6-105(part), 6-106(part).

2-9-603. Purchase. (1) The department of administration shall purchase all surety bonds for state officers and employees.

(2) All bonds shall be purchased by competitive bid.

(3) Bonds purchased by the department of administration shall be executed by responsible insurance or surety companies admitted and authorized to execute surety bonds in this state.

History: (1)En. Sec. 1, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; Sec. 6-105, R.C.M. 1947; (2)En. Sec. 2, Ch. 177, L. 1965; amd. Sec. 1, Ch. 326, L. 1974; Sec. 6-106, R.C.M. 1947; (3)En. Sec. 3, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; Sec. 6-107, R.C.M. 1947; R.C.M. 1947, 6-105(part), 6-106(part), 6-107.

2-9-604. Proration of bond premiums. (1) The department of administration shall prorate the premiums for bonds covering more than one state agency or institution among the state agencies and institutions whose officers and employees are covered. Such proration shall be based on the risk of bonding the officers and employees of each agency or institution.

(2) The department of administration shall order payment of the prorated amount from moneys which are available to such agencies or institutions for the payment of general administrative expenses.

History: En. Sec. 4, Ch. 177, L. 1965; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 6-108.

Part 7

Bonds of County Officers and Employees

2-9-701. County officers and employees to be bonded — form — conditions of group bonds. (1) All elected and appointed county officers and employees shall be bonded.

(2) The form of bonds for county officers and employees must be approved by the county attorney and filed and recorded in the office of the county clerk and recorder.

(3) A bond may cover an individual officer or employee, or a blanket bond may cover all officers and employees or any group or combination of county officers and employees.

(4) All official bonds covering a group of county officers or employees shall be made upon the same conditions as are required of a principal under

subsections (1) through (3) of 2-9-504, except that the bond need not be signed by each officer or employee.

History: En. Secs. 1, 2, 6, 7, Ch. 68, L. 1967; R.C.M. 1947, 6-203(part), 6-204(part), 6-208, 6-209.

2-9-702. Amount. (1) The amount for which a county officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation.

(2) The amount for which a county officer or employer or group of officers or employees shall be bonded is subject to the supervision of the department of administration. If the department of adminstration determines that the amount of the bond is inadequate, it may require the board of county commissioners to purchase an adequate bond.

History: (1)En. Sec. 2, Ch. 68, L. 1967; Sec. 6-204, R.C.M. 1947; (2)En. Sec. 3, Ch. 68, L. 1967; amd. Sec. 46, Ch. 348, L. 1974; amd. Sec. 7, Ch. 213, L. 1975; Sec. 6-205, R.C.M. 1947; R.C.M. 1947, 6-204(part), 6-205; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" twice in (2).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 2-9-702 . . . are transferred to the department of administration."

2-9-703. Purchase. (1) The board of county commissioners shall purchase all surety bonds for county officers and employees.

(2) The board of county commissioners shall actively solicit offers on a competitive basis from available qualified insurance or surety companies before purchasing the bonds.

(3) Bonds purchased by the board of county commissioners shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.

History: En. Secs. 1, 2, 4, Ch. 68, L. 1967; R.C.M. 1947, 6-203(part), 6-204(part), 6-206.

2-9-704. Premiums charged against budgets. The premiums for all surety company bonds shall be a proper charge against the budgets of the county general fund or against the budget or budgets of those county funds where the officer or employee renders service.

History: En. Sec. 5, Ch. 68, L. 1967; R.C.M. 1947, 6-207.

2-9-705 through 2-9-710 reserved.

2-9-711. Actions against a sheriff for official acts. If an action be brought against a sheriff for an act done by virtue of his office and he give written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein shall be conclusive evidence of his right to recover against such sureties. The court may, on motion, upon notice of 5 days, order judgment to be entered up against them for the amount so recovered, including costs.

History: En. Sec. 431, p. 130, Bannack Stat.; re-en. Sec. 591, p. 156, Cod. Stat. 1871; re-en. Sec. 516, p. 176, L. 1877; re-en. Sec. 516, 1st Div. Rev. Stat. 1879; re-en. Sec. 533, 1st Div. Comp. Stat. 1887; amd. Sec. 1898, C. Civ. Proc. 1895; re-en. Sec. 7191, Rev. C. 1907; re-en. Sec. 9824, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1055; re-en. Sec. 9824, R.C.M. 1935; R.C.M. 1947, 93-8709.

Part 8

Bonds of City Officers and Employees

2-9-801. Application to commission and commission-manager forms of government. This part applies to the bonding of all elected or appointed officers and employees under the commission form of city government and to the commission-manager form of city government.
History: **En. Sec. 8, Ch. 67, L. 1967; R.C.M. 1947, 6-608.**

2-9-802. Bonds — amount. (1) All elected or appointed city or town officers and employees shall be bonded in such sums as the ordinance may require. The amount for which a city or town officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation.

(2) The amount for which a city or town officer or employee or group of officers or employees shall be bonded is subject to the supervision of the department of administration. If the department of administration determines that the amount of the bond is inadequate, it may require the city or town council or commission to purchase an adequate bond.
History: **(1)En. Sec. 2, Ch. 67, L. 1967; Sec. 6-602, R.C.M. 1947; (2)En. Sec. 3, Ch. 67, L. 1967; amd. Sec. 47, Ch. 348, L. 1974; amd. Sec. 8, Ch. 213, L. 1975; Sec. 6-603, R.C.M. 1947; R.C.M. 1947, 6-602(part), 6-603; amd. Sec. 7, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" twice in (2).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 2-9-802 . . . are transferred to the department of administration."

2-9-803. Form — coverage — approval. (1) A bond may cover an individual officer or employee or a blanket bond may cover all officers and employees or any group or combination of officers and employees.

(2) All official bonds covering a group of city or town officers or employees shall be made upon the same conditions as are required of a principal under subsections (1) through (3) of 2-9-504, except that the bond need not be signed by each officer and employee.

(3) The form of bonds for city or town officers and employees must be approved by the city or town attorney and filed and recorded in the office of the city or town clerk.
History: **En. Secs. 1, 5, 6, Ch. 67, L. 1967; R.C.M. 1947, 6-601(part), 6-605, 6-606.**

2-9-804. Purchase — responsible surety. (1) The city or town council or commissioners shall purchase all surety bonds for city officers and employees.

(2) The city or town council or commission shall actively solicit offers on a competitive bases from available qualified insurance or surety companies before purchasing the bonds.

(3) Bonds purchased by the city or town council or commission shall be executed by responsible insurance or surety companies authorized and admitted to execute surety bonds in this state.
History: **En. Secs. 1, 2, 4, Ch. 67, L. 1967; R.C.M. 1947, 6-601(part), 6-602(part), 6-604.**

2-9-805. Premiums — charge against budget. The premiums for all surety company bonds shall be a proper charge against the budget or budgets of the city or town general fund or against the budget or budgets of those city or town funds where the officer or employee renders service.

History: En. Sec. 7, Ch. 67, L. 1967; R.C.M. 1947, 6-607.

CHAPTERS 10 THROUGH 14

RESERVED

CHAPTER 15

EXECUTIVE BRANCH OFFICERS AND AGENCIES

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2-15-136. References.
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Part 2 — Governor

2-15-201. Powers and duties of governor.
2-15-202. Repealed. Sec. 32, Ch. 184, L. 1979.
Sections 2-15-203 through 2-15-210 reserved.
2-15-211. Mental disabilities board of visitors — composition — allocation.
2-15-212. Reserved water rights compact commission.
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Part 3 — Lieutenant Governor

2-15-301. Office of lieutenant governor.
2-15-302. Powers and duties of lieutenant governor.
2-15-303. Repealed. Sec. 1, Ch. 66, L. 1979.

Part 4 — Secretary of State

2-15-401. Duties of secretary of state.

2-15-402. Deputy secretary of state.
Sections 2-15-403 through 2-15-410 reserved.
2-15-411. Commissioner of political practices.
2-15-412. Board of state canvassers.
2-15-413. Repealed. Sec. 407, Ch. 571, L. 1979.

Part 5 — Attorney General

2-15-501. General duties.
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Part 6 — State Auditor

2-15-601. State auditor.
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Part 7 — Superintendent of Public Instruction

2-15-701. Superintendent of public instruction.

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Part 10 — Department of Administration

2-15-1001. Department of administration — head.
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Sections 2-15-1003 and 2-15-1004 reserved.
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2-15-1006. Merit system council — allocation — composition.
2-15-1007. Board of examiners — allocation.
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2-15-1009. Public employees' retirement board — terms — allocation.
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2-15-1011. State agency for surplus property.
2-15-1012. Repealed. Sec. 14, Ch. 555, L. 1979.
2-15-1013. Records committee — composition and meetings.
2-15-1014. Office of workers' compensation judge — allocation — appointment — salary.
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Part 11 — Department of Community Affairs
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2-15-1101. Repealed, Sec. 22, Ch. 274, L. 1981.
2-15-1102. Renumbered 2-15-1811, Sec. 12, Ch. 274, L. 1981.
2-15-1103. Renumbered 2-15-1812, Sec. 12, Ch. 274, L. 1981.
2-15-1104. Renumbered 2-15-1821, Sec. 12, Ch. 274, L. 1981.
Sections 2-15-1105 through 2-15-1110 reserved.
2-15-1111. Renumbered 2-15-1813, Sec. 12, Ch. 274, L. 1981.
2-15-1112. Renumbered 90-11-101, Sec. 20, Ch. 274, L. 1981.
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Part 12 — Department of Military Affairs

2-15-1201. Department of military affairs — head.
2-15-1202. Adjutant general — qualifications — salary.
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Part 13 — Department of Revenue

2-15-1301. Department of revenue — head.

2-15-1302. Director of revenue.
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Part 15 — Education

2-15-1501. State board of education.
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2-15-1505. Board of regents of higher education.
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2-15-1507. Board of public education.
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Sections 2-15-1509 and 2-15-1510 reserved.
2-15-1511. Agencies allocated to state board of education.
2-15-1512. Boards and offices associated with state historical society.
2-15-1513. Montana arts council.
2-15-1514. State library commission.
2-15-1515. Commission on federal higher education programs.
2-15-1516. Fertilizer advisory committee.
2-15-1517. Financial assistance program advisory council.
2-15-1518. Director of fire services training school.
2-15-1519. Fire services training advisory council.
2-15-1520. Guaranteed student loan advisory council — terms, compensation.

Part 16 — Department of Professional and Occupational Licensing

(Abolished, Sec. 3, Ch. 274, L. 1981)

2-15-1601. Repealed, Sec. 22, Ch. 274, L. 1981.
Sections 2-15-1602 through 2-15-1604 reserved.
2-15-1605. Renumbered 2-15-1841, Sec. 4, Ch. 274, L. 1981.
2-15-1606. Renumbered 2-15-1842, Sec. 4, Ch. 274, L. 1981.
2-15-1607. Repealed. Sec. 6, Ch. 87, L. 1981.
2-15-1608. Repealed. Sec. 10, Ch. 470, L. 1981.
2-15-1609. Renumbered 2-15-1843, Sec. 4, Ch. 274, L. 1981.
2-15-1610. Renumbered 2-15-1844, Sec. 4, Ch. 274, L. 1981.
2-15-1611. Renumbered 2-15-1845, Sec. 4, Ch. 274, L. 1981.
2-15-1612. Renumbered 2-15-1846, Sec. 4, Ch. 274, L. 1981.
2-15-1613. Renumbered 2-15-1847, Sec. 4, Ch. 274, L. 1981.
2-15-1614. Renumbered 2-15-1848, Sec. 4, Ch. 274, L. 1981.
2-15-1615. Renumbered 2-15-1849, Sec. 4, Ch. 274, L. 1981.
2-15-1616. Renumbered 2-15-1850, Sec. 4, Ch. 274, L. 1981.
2-15-1617. Renumbered 2-15-1851, Sec. 4, Ch. 274, L. 1981.
2-15-1618. Renumbered 2-15-1852, Sec. 4, Ch. 274, L. 1981.
2-15-1619. Renumbered 2-15-1853, Sec. 4, Ch. 274, L. 1981.
Sections 2-15-1620 through 2-15-1624 reserved.
2-15-1625. Renumbered 2-15-1856, Sec. 4, Ch. 274, L. 1981.
2-15-1626. Renumbered 2-15-1857, Sec. 4, Ch. 274, L. 1981.
2-15-1627. Board of massage therapists. *(Terminated)*
2-15-1628. Renumbered 2-15-1858, Sec. 4, Ch. 274, L. 1981.
Sections 2-15-1629 and 2-15-1630 reserved.
2-15-1631. Renumbered 2-15-1861, Sec. 4, Ch. 274, L. 1981.
2-15-1632. Renumbered 2-15-1862, Sec. 4, Ch. 274, L. 1981.
Sections 2-15-1633 through 2-15-1640 reserved.
2-15-1641. Renumbered 2-15-1866, Sec. 4, Ch. 274, L. 1981.
2-15-1642. Repealed. Sec. 14, Ch. 497, L. 1979.
2-15-1643. Repealed. Sec. 195, Ch. 575, L. 1981.
2-15-1644. Renumbered 2-15-1867, Sec. 4, Ch. 274, L. 1981.
Sections 2-15-1645 through 2-15-1650 reserved.
2-15-1651. Renumbered 2-15-1871, Sec. 4, Ch. 274, L. 1981.

2-15-1652. Renumbered 2-15-1872, Sec. 4, Ch. 274, L. 1981.
2-15-1653. Renumbered 2-15-1873, Sec. 4, Ch. 274, L. 1981.
2-15-1654. Renumbered 2-15-1874, Sec. 4, Ch. 274, L. 1981.
2-15-1655. Renumbered 2-15-1875, Sec. 4, Ch. 274, L. 1981.
2-15-1656. Repealed. Sec. 195, Ch. 575, L. 1981.
Sections 2-15-1657 through 2-15-1660 reserved.
2-15-1661. Repealed. Sec. 1, Ch. 322, L. 1981.
2-15-1662. Renumbered 2-15-1881, Sec. 4, Ch. 274, L. 1981.

Part 17 — Department of Labor and Industry

2-15-1701. Department of labor and industry — head.
2-15-1702. Division of workers' compensation — head.
2-15-1703. Repealed. Sec. 5, Ch. 349, L. 1981.
2-15-1704. Board of labor appeals — allocation — composition — function — quasi-judicial.
2-15-1705. Board of personnel appeals — allocation — composition — vote necessary for decision — quasi-judicial.
2-15-1706. Commission for human rights — allocation — quasi-judicial.

Part 18 — Department of Commerce

2-15-1801. Department of commerce — head.
2-15-1802. Board of milk control — membership — allocation — quasi-judicial.
2-15-1803. State banking board — composition — allocation.
2-15-1804. Proprietary postsecondary educational advisory council.
Sections 2-15-1805 through 2-15-1810 reserved.
2-15-1811. Board of county printing — composition — allocation — compensation.
2-15-1812. Board of aeronautics — qualification — allocation — quasi-judicial.
2-15-1813. Office of state coordinator of Indian affairs.
2-15-1814. Board of housing — allocation — composition — quasi-judicial.
Sections 2-15-1815 through 2-15-1820 reserved.
2-15-1821. Coal board — allocation — composition.
2-15-1822. Hard-rock mining impact board.
Sections 2-15-1823 through 2-15-1840 reserved.
2-15-1841. Board of medical examiners.
2-15-1842. Board of dentistry.
2-15-1843. Board of pharmacists.
2-15-1844. Board of nursing.
2-15-1845. Board of nursing home administrators.
2-15-1846. Board of optometrists.
2-15-1847. Board of chiropractors.
2-15-1848. Board of radiologic technologists.
2-15-1849. Board of speech pathologists and audiologists.
2-15-1850. Board of hearing aid dispensers.
2-15-1851. Board of psychologists.
2-15-1852. Board of veterinarians.
2-15-1853. Board of morticians.
Sections 2-15-1854 and 2-15-1855 reserved.
2-15-1856. Board of barbers.
2-15-1857. Board of cosmetologists.
2-15-1858. Board of physical therapy examiners.
Sections 2-15-1859 and 2-15-1860 reserved.
2-15-1861. Board of sanitarians.
2-15-1862. Board of water well contractors.
Sections 2-15-1863 through 2-15-1865 reserved.
2-15-1866. Board of public accountants.
2-15-1867. Board of realty regulation.
Sections 2-15-1868 through 2-15-1870 reserved.
2-15-1871. Board of architects.
2-15-1872. Board of landscape architects.
2-15-1873. Board of professional engineers and land surveyors.
2-15-1874. State electrical board.
2-15-1875. Board of plumbers.

Sections 2-15-1876 through 2-15-1880 reserved.
2-15-1881. Board of horseracing.

Part 19 — Insurance and Investment

2-15-1901. Office of securities commissioner.
2-15-1902. Insurance department.
2-15-1903. Commissioner of insurance designated.

Part 20 — Department of Justice

2-15-2001. Department of justice — head.
2-15-2002. Division of motor vehicles.
2-15-2003. Bureau of criminal investigation.
2-15-2004. Division of forensic science — head.
2-15-2005. Fire marshal bureau — advisory council.
2-15-2006. Board of crime control — composition — allocation.
2-15-2007. Highway traffic safety program.
Sections 2-15-2008 through 2-15-2010 reserved.
2-15-2011. Distribution of fire code.

Part 21 — Department of Health and Environmental Sciences

2-15-2101. Department of health and environmental sciences — head.
2-15-2102. Director of health and environmental sciences — qualifications.
2-15-2103. Division of environmental sciences — functions.
2-15-2104. Board of health and environmental sciences — membership — quasi-judicial.
2-15-2105. Board of water and wastewater operators.
2-15-2106. Air pollution control advisory council.
2-15-2107. Water pollution control advisory council.

Part 22 — Department of Social and Rehabilitation Services

2-15-2201. Department of social and rehabilitation services — head.
2-15-2202. Board of veterans' affairs.
2-15-2203. Board of social and rehabilitation appeals — allocation — quasi-judicial.
2-15-2204. Developmental disabilities planning and advisory council.
2-15-2205. Division of visual services.

Part 23 — Department of Institutions

2-15-2301. Department of institutions — head.
2-15-2302. Board of pardons — composition — allocation — quasi-judicial.
2-15-2303. Repealed. Sec. 3, Ch. 495, L. 1979.
2-15-2304. Repealed. Sec. 1, Ch. 286, L. 1981.

Part 24 reserved

Part 25 — Department of Highways

2-15-2501. Department of highways — head.
2-15-2502. Highway commission.

Part 26 — Department of Public Service Regulation

2-15-2601. Department of public service regulation — head.
2-15-2602. Public service commission — composition.

Parts 27 through 29 reserved

Part 30 — Department of Agriculture

2-15-3001. Department of agriculture — head.

2-15-3002. Montana wheat research and marketing committee — composition — allocation.
2-15-3003. Board of hail insurance.
2-15-3004. Montana alfalfa seed committee — composition — allocation.
2-15-3005. Alfalfa leaf-cutting bee advisory committee — membership — compensation.

Part 31 — Department of Livestock

2-15-3101. Department of livestock — head.
2-15-3102. Board of livestock — composition.
2-15-3103. Montana pork research and marketing committee.

Part 32 — Department of State Lands

2-15-3201. Department of state lands — head.
2-15-3202. Commissioner of state lands.

Part 33 — Department of Natural Resources and Conservation

2-15-3301. Department of natural resources and conservation — head.
2-15-3302. Board of natural resources and conservation — composition — quasi-judicial.
2-15-3303. Board of oil and gas conservation — composition — allocation — quasi-judicial.
2-15-3304. State coordinator for rangeland resources.
2-15-3305. Rangeland resources committee.
2-15-3306. Soil survey advisory council.

Part 34 — Department of Fish, Wildlife, and Parks

2-15-3401. Department of fish, wildlife, and parks — head.
2-15-3402. Fish and game commission — composition — qualifications — quasi-judicial.
2-15-3403. Montana outfitters' council.

Part 1

Organization

2-15-101. Declaration of policy and purpose. (1) The purpose of this chapter is to comply with Article VI, section 7, of the Montana constitution which requires that all executive and administrative offices, boards, bureaus, commissions, agencies, and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government.

(2) It is the public policy of this state and the purpose of this chapter to create a structure of the executive branch of state government which is responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions; to strengthen the executive capacity to administer effectively and efficiently at all levels; to encourage greater public participation in state government; to effect the grouping of state agencies into a reasonable number of departments primarily according to function; to provide that the responsibility within the executive branch of state government

for the implementation of programs and policies is clearly fixed and ascertainable; and to eliminate overlapping and duplication of effort within the executive branch of state government.

History: **En. 82A-102 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 2, Ch. 358, L. 1973; R.C.M. 1947, 82A-102.**

2-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Executive branch" means the executive branch of state government referred to in the Montana constitution, Articles III and VI.

(2) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.

(3) "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or department, and an agency allocated to a department for administrative purposes only by this chapter.

(4) "Department" means a principal functional and administrative entity, created by this chapter within the executive branch of state government; is one of the 20 principal departments permitted under the constitution; and includes its units.

(5) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this chapter.

(6) "Director" means a department head specifically referred to as a director in this chapter, and does not mean a commission, board, commissioner, or constitutional officer.

(7) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing such other activities as may be necessary to comply with federal funding requirements and does not mean administering a program or function or setting policy.

(8) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.

(9) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes but is not limited to the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules; holding hearings; and any other act necessary to the performance of a quasi-judicial function.

(10) "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function.

History: **En. 82A-103 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 3, Ch. 358, L. 1973; R.C.M. 1947, 82A-103.**

2-15-103. Policymaking authority and administrative powers of governor. In accordance with Article VI, section 4, of the Montana constitution, the governor is the chief executive officer of the state. Subject to the constitution and law of this state, the governor shall formulate and administer the policies of the executive branch of state government. In the execution of these policies, the governor has full powers of supervision, approval, direction, and appointment over all departments and their units, other than the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, except as otherwise provided by law. Whenever a conflict arises as to the administration of the policies of the executive branch of state government, except for conflicts arising in the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, the governor shall resolve the conflict, and the decision of the governor is final.

History: En. 82A-105 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 5, Ch. 358, L. 1973; R.C.M. 1947, 82A-105.

2-15-104. Structure of executive branch. (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government and their respective functions are allocated by this chapter among and within the following departments or entities:

(a) department of administration;
(b) department of military affairs;
(c) department of revenue;
(d) state board of education;
(e) department of labor and industry;
(f) department of commerce;
(g) department of justice;
(h) department of health and environmental sciences;
(i) department of social and rehabilitation services;
(j) department of institutions;
(k) department of highways;
(l) department of public service regulation;
(m) department of agriculture;
(n) department of livestock;
(o) department of state lands;
(p) department of natural resources and conservation;
(q) department of fish, wildlife, and parks.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a division. Each division shall be headed by an administrator.

(b) The principal unit of a division is a bureau. Each bureau shall be headed by a chief.

(c) The principal unit of a bureau is a section. Each section shall be headed by a supervisor.

History: En. 82A-104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 250, L. 1973; amd. Sec. 4, Ch. 358, L. 1973; amd. Sec. 2, Ch. 51, L. 1974; amd. Sec. 49, Ch. 213, L. 1975; R.C.M. 1947, 82A-104; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "department of community affairs" and "department of professional and occupational licensing" in (1); substituted "commerce" for "business regulation" in (1)(f).

2-15-105 through 2-15-110 reserved.

2-15-111. Appointment and qualifications of department heads. (1) The governor shall appoint at the beginning of each gubernatorial term each department head who is a director in this chapter.

(2) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(3) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

(4) The governor shall select a director on the basis of his professional and administrative knowledge and experience and such additional qualifications as are provided by law.

(5) If a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

(6) Heads of departments who are not directors shall be elected or appointed and serve, and their vacancies filled, as provided by law.

History: En. 82A-106 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 358, L. 1973; R.C.M. 1947, 82A-106.

2-15-112. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that he requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) subject to the approval of the governor, establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with 2-15-104(2).

(h) subject to law and the state merit system, if applicable, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) maintain a central office in Helena for the department and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) subject to law and the state merit system, if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) delegate any of the functions vested in the department head to subordinate employees;

(c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) enter into agreements with federal, state, and local agencies necessary to carry out the department's functions.

History: En. 82A-107 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 358, L. 1973; amd. Sec. 26, Ch. 285, L. 1977; R.C.M. 1947, 82A-107.

2-15-113. Prior right of department head to agencies and records. Each department head designated by this chapter or appointed by the governor has, before assuming the office of the department head, full access to all agencies and their records within the department created by this chapter for the purpose of formulating plans for internal organization and the fiscal and personnel administration of the department.

History: En. 82A-109 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 358, L. 1973; R.C.M. 1947, 82A-109.

2-15-114 through 2-15-120 reserved.

2-15-121. Allocation for administrative purposes only. (1) An agency allocated to a department for administrative purposes only in this chapter shall:

(a) exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department;

(b) submit its budgetary requests through the department;

(c) submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:

(a) direct and supervise the budgeting, record keeping, reporting, and related administrative and clerical functions of the agency;

(b) include the agency's budgetary requests in the departmental budget;

(c) collect all revenues for the agency and deposit them in the proper fund or account. Except as provided in 37-1-101, the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) provide staff for the agency. Unless otherwise indicated in this chapter, the agency may not hire its own personnel.

(e) print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this chapter shall:

(a) represent the agency in communications with the governor;

(b) allocate office space to the agency as necessary, subject to the approval of the department of administration.

History: En. 82A-108 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 358, L. 1973; R.C.M. 1947, 82A-108.

2-15-122. Creation of advisory councils. (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(2) Each advisory council created under this section shall be known as the ".... advisory council".

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in 2-15-102(7).

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed $25 for each day in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c) of this section, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

(a) name, in accordance with subsection (2) of this section;
(b) composition;
(c) names and addresses of the appointed members;
(d) purpose;
(e) term of existence, in accordance with subsection (10) of this section.

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor or by the board of public education, the board of regents of higher education, the state board of education, the attorney general, or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (1)(c) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

History: En. 82A-110 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 358, L. 1973; amd. Sec. 3, Ch. 51, L. 1974; amd. Sec. 56, Ch. 439, L. 1975; R.C.M. 1947, 82A-110.

2-15-123. Administratively created agencies — prohibition. The governor, a department head, or any other official of the executive branch of state government or an agency may not, by administrative action, create or attempt to create an agency of state government. This section does not apply to:

(1) advisory councils created in accordance with 2-15-122;

(2) units within the internal structure of a department established under 2-15-112(1)(g).

History: En. 82A-111 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 358, L. 1973; R.C.M. 1947, 82A-111.

2-15-124. Quasi-judicial boards. If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member shall be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed and qualified. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed and qualified. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate. However, the governor may appoint a member to assume office before the senate meets at its next regular session to consider the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid $25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.

History: En. 82A-112 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 12, Ch. 358, L. 1973; amd. Sec. 57, Ch. 439, L. 1975; amd. Sec. 1, Ch. 186, L. 1977; R.C.M. 1947, 82A-112(1), (2)(a), (3) thru (8).

2-15-125. Future agencies and functions. If an agency or a function is not allocated or transferred to a department or a constitutional office by this chapter or any other act of the legislature, the governor shall, by executive order, allocate that agency for administrative purposes only or function to the appropriate principal department or constitutional office. The governor shall transmit copies of all executive orders issued under this section to the legislature at its next regular session.

History: En. 82A-115 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 13, Ch. 358, L. 1973; R.C.M. 1947, 82A-115.

2-15-126 through 2-15-130 reserved.

2-15-131. Rights of state personnel. Unless otherwise provided in this chapter, each state officer or employee affected by the reorganization of the executive branch of state government under this chapter is entitled to all rights which he possessed as a state officer or employee before the effective date of the applicable part of this chapter, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee but to continue only those rights in effect before the effective date of the applicable part of this chapter or an amendment to this chapter.

History: En. 82A-116 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 358, L. 1973; R.C.M. 1947, 82A-116.

2-15-132. Rights to property. The department or unit thereof that succeeds to all or part of the functions of an agency under a reorganization within the executive branch also succeeds to the rights to all real and personal property of that agency relating to the functions or parts of functions transferred. The property includes real property, records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations, accounts within and without the state treasury, funds, vehicles, and all other similar property. However, the department or unit may not use or divert moneys in a fund or account for a purpose other than provided by law. The governor shall resolve any conflict as to the proper disposition of the property, and his decision is final. This section does not apply to property owned by the federal government.

History: En. 82A-117 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 15, Ch. 358, L. 1973; R.C.M. 1947, 82A-117; amd. Sec. 3, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a reorganization within the executive branch" for "this chapter" in the first sentence.

Effective Date: Section 9, Ch. 575, L. 1981, provided: "Sections 3 through 8 are effective on passage and approval." Approved May 1, 1981.

2-15-133. Rules and orders. The department or unit thereof that succeeds to all or part of the functions of an agency under a reorganization within the executive branch also succeeds to the rules and orders of that agency relating to the functions or parts of functions transferred. The rules and orders of any agency in effect before the effective date of the transfer remain in effect until amended, repealed, superseded, or nullified by proper authority or by law.

History: En. 82A-118 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 16, Ch. 358, L. 1973; R.C.M. 1947, 82A-118; amd. Sec. 4, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a reorganization within the executive branch" for "this chapter" in the first sentence.

Effective Date: Section 9, Ch. 575, L. 1981, provided: "Sections 3 through 8 are effective on passage and approval." Approved May 1, 1981.

2-15-134. Legal proceedings. The transfer or abolition of an agency or function by a reorganization within the executive branch does not affect the validity of any judicial or administrative proceeding pending or which could have been commenced before the effective date of the transfer or abolition, and the department or unit which succeeds to the functions of an agency relating to the proceeding shall be substituted as a party in interest.

History: En. 82A-119 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 17, Ch. 358, L. 1973; R.C.M. 1947, 82A-119; amd. Sec. 5, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "by a reorganization within the executive branch" for "under this chapter".

Effective Date: Section 9, Ch. 575, L. 1981, provided: "Sections 3 through 8 are effective on passage and approval." Approved May 1, 1981.

2-15-135. Rights and duties under existing transactions. The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the effective date of a transfer of functions by a reorganization within the executive branch, by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the transfer of the functions of an agency or the abolition of an agency. The department or unit which succeeds to the functions of an agency is substituted for that agency and succeeds to its rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions.

History: En. 82A-120 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 18, Ch. 358, L. 1973; R.C.M. 1947, 82A-120; amd. Sec. 6, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "by a reorganization within the executive branch" for "under this chapter" in the first sentence; deleted "under this chapter" at the end of the first sentence; made minor changes in grammar.

Effective Date: Section 9, Ch. 575, L. 1981, provided: "Sections 3 through 8 are effective on passage and approval." Approved May 1, 1981.

2-15-136. References. Unless inconsistent with this chapter, if an agency is abolished or if a function of an agency is transferred to another agency, references to the abolished agency or to the agency whose functions were transferred in any law, contract, or other document shall apply to the agency which succeeds to the functions which were transferred.

History: En. 82A-121 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 19, Ch. 358, L. 1973; R.C.M. 1947, 82A-121; amd. Sec. 7, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "under this chapter" after "is abolished".

Effective Date: Section 9, Ch. 575, L. 1981, provided: "Sections 3 through 8 are effective on passage and approval." Approved May 1, 1981.

2-15-137. Federal aid. If any part of a reorganization within the executive branch is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency, or a political subdivision, that part of the reorganization has no effect and the governor may issue an executive order which substitutes for that part to the extent necessary to effectuate the receipt of federal aid. The order is effective until the legislature again acts upon the matter.

History: En. 82A-122 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 20, Ch. 358, L. 1973; R.C.M. 1947, 82A-122; amd. Sec. 8, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a reorganization within the executive branch" for "this chapter" and "the reorganization" for "this chapter".

Effective Date: Section 9, Ch. 575, L. 1981, provided: "Sections 3 through 8 are effective on passage and approval." Approved May 1, 1981.

Part 2

Governor

2-15-201. Powers and duties of governor. In addition to the duties prescribed by the constitution, the governor shall perform the following duties:

(1) He shall supervise the official conduct of all executive and ministerial officers.

(2) He shall see that all offices are filled and the duties thereof performed or, in default thereof, apply such remedy as the law allows. If the remedy is imperfect, he shall acquaint the legislature therewith at its next session.

(3) He shall make the appointments and supply the vacancies as required by law.

(4) He is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

(5) Whenever any suit or legal proceeding is pending against this state or which may affect the title of this state to any property or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state and may employ such additional counsel as he may judge expedient.

(6) He may require the attorney general or county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

(7) He may require the attorney general to aid the county attorney in the discharge of his duties.

(8) He may offer rewards not exceeding $1,000 each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison or any person who has committed or is charged with an offense punishable by death.

(9) He shall perform such duties respecting fugitives from justice as are prescribed by Title 46, chapter 30.

(10) He shall issue land warrants and patents, as prescribed in 77-2-342.

(11) He shall prepare a biennial report pursuant to 2-7-102.

(12) He may require any officer or board to make special reports to him, upon demand, in writing.

(13) He shall discharge the duties of member of the board of examiners, of nonvoting ex officio member of the state board of education, and of member of the board of land commissioners.

(14) He has the other powers and must perform the other duties as are devolved upon him by this code or any other law of this state.

History: En. Sec. 370, Pol. C. 1895; re-en. Sec. 145, Rev. C. 1907; re-en. Sec. 124, R.C.M. 1921; Cal. Pol. C. Sec. 380; re-en. Sec. 124, R.C.M. 1935; amd. Sec. 94, Ch. 199, L. 1965; R.C.M. 1947, 82-1301; amd. Sec. 10, Ch. 184, L. 1979; amd. Sec. 10, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "(10) He shall issue and transmit election proclamations, as prescribed by [13-11-101]."

2-15-202. Repealed. Sec. 32, Ch. 184, L. 1979.

History: En. Sec. 372, Pol. C. 1895; re-en. Sec. 147, Rev. C. 1907; re-en. Sec. 126, R.C.M. 1921; Cal. Pol. C. Sec. 382; re-en. Sec. 126, R.C.M. 1935; R.C.M. 1947, 82-1303.

2-15-203 through 2-15-210 reserved.

2-15-211. Mental disabilities board of visitors — composition — allocation. (1) The governor shall appoint a mental disabilities board of visitors.

(2) The board shall consist of five persons representing but not limited to consumers, doctors of medicine, and the behavioral sciences, at least three of whom may not be professional persons and at least one of whom shall be a representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled. No one may be a member of the board who is a full-time agent or employee of the department of institutions or a mental health facility affected by Title 53, chapter 20, part 1, and chapter 21, part 1, except this prohibition does not affect any employee of a state college or university.

(3) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in Title 53, chapter 20, part 1, and chapter 21, part 1.

History: Ap. p. Sec. 30, Ch. 466, L. 1975; amd. Sec. 16, Ch. 546, L. 1977; Sec. 38-1330, R.C.M. 1947; Ap. p. Sec. 32, Ch. 468, L. 1975; amd. Sec. 18, Ch. 546, L. 1977; Sec. 38-1232, R.C.M. 1947; R.C.M. 1947, 38-1232(part), 38-1330(part).

2-15-212. Reserved water rights compact commission. (1) There is created a reserved water rights compact commission.

(2) Commissioners are appointed within 30 days of May 11, 1979, as follows:

(a) two members of the house of representatives appointed by the speaker, each from a different political party;

(b) two members of the senate appointed by the president, each from a different political party;

(c) four members designated by the governor; and

(d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the governor's office for administrative purposes only. The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in 85-2-241.

(5) Members appointed to the commission shall serve until the work of the commission is completed or until they resign or are otherwise unable to serve. A vacancy must be filled in the manner of the original appointment.

History: En. Sec. 27, Ch. 697, L. 1979.

2-15-213 through 2-15-220 reserved.

2-15-221. Governor-elect — staff and services provided. (1) As used in this section, unless the context clearly indicates otherwise, "governor-elect" means the person elected at a general election to the office of governor who is not the incumbent governor.

(2) The department of administration shall provide the governor-elect and his necessary staff with suitable office space in the capitol building, together with furnishings, supplies, equipment, and telephone service for the period between the general election and the inauguration.

(3) The governor-elect may obtain the assistance of persons of his own choosing, between the general election and inauguration, and they shall receive reasonable compensation for their services. These persons shall be state employees, but they shall not be subject to any civil service or personnel laws or rules of the state.

(4) In addition, the governor-elect may request that the department of administration assign one or more employees of the department of administration to assist the governor-elect and his staff in the study and interpretation of information. Employees of the department of administration shall be assigned for the time necessary between the general election and the inauguration.

(5) The funds necessary to carry out the provisions of this section shall be included in the appropriation request of the department of administration to the legislature meeting in regular session immediately prior to a general election when a governor will be chosen.

History: (1)En. Sec. 1, Ch. 47, L. 1969; Sec. 82-1311, R.C.M. 1947; (2) thru (5)En. Secs. 2, 3, 4, Ch. 47, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; Secs. 82-1312, 82-1313, 82-1314, R.C.M. 1947; R.C.M. 1947, 82-1311, 82-1312, 82-1313, 82-1314.

Part 3

Lieutenant Governor

2-15-301. Office of lieutenant governor. There is created an office of lieutenant governor.

History: En. Sec. 1, Ch. 297, L. 1973; R.C.M. 1947, 82-1702.1.

2-15-302. Powers and duties of lieutenant governor. (1) The lieutenant governor may:

(a) prescribe rules for the administration of the office;

(b) hire personnel for the office and establish policy to be followed by such personnel; and

(c) compile and submit a budget for the office.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor.

History: En. Secs. 2, 3, Ch. 297, L. 1973; R.C.M. 1947, 82-1702.2, 82-1702.3.

2-15-303. Repealed. Sec. 1, Ch. 66, L. 1979.

History: En. Sec. 392, Pol. C. 1895; re-en. Sec. 152, Rev. C. 1907; re-en. Sec. 132, R.C.M. 1921; re-en. Sec. 132, R.C.M. 1935; amd. Sec. 5, Ch. 297, L. 1973; R.C.M. 1947, 82-1703.

Part 4

Secretary of State

2-15-401. Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(1) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;

(2) keep a register of and attest the official acts of the governor, including all appointments made by him, with date of commission and names of appointees and predecessors;

(3) affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(4) record in proper books all conveyances made to the state and all articles of incorporation filed in his office;

(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;

(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(7) furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

(8) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

(9) file in his office descriptions of seals in use by the different state officers;

(10) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required of him by law;

(11) report to the governor as prescribed in 2-7-102;

(12) register marks as provided in Title 30, chapter 13, part 3;

(13) report annually to the legislative council all changes of names received pursuant to 27-31-205 for publication in the Laws of Montana;

(14) report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(15) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

History: En. Sec. 401, Pol. C. 1895; re-en. Sec. 154, Rev. C. 1907; re-en. Sec. 134, R.C.M. 1921; Cal. Pol. C. Sec. 408; re-en. Sec. 134, R.C.M. 1935; amd. Sec. 95, Ch. 199, L. 1965; amd. Sec. 1, Ch. 96, L. 1973; R.C.M. 1947, 82-2202; amd. Sec. 2, Ch. 159, L. 1979; amd. Sec. 11, Ch. 184, L. 1979; amd. Sec. 19, Ch. 429, L. 1979; amd. Sec. 1, Ch. 494, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (13), which read: "(13) distribute the bound volumes of the decisions of the supreme court in the manner provided by 3-2-604".

2-15-402. Deputy secretary of state. (1) The secretary of state shall appoint a chief deputy and a deputy who in the absence of the principal shall perform all the duties of office. In the case of a vacancy in the office of secretary of state, the chief deputy shall perform all the duties of the office until such disability be removed or vacancy filled.

(2) Such deputies shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of their duties.

History: **En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 82-601(part).**

2-15-403 through 2-15-410 reserved.

2-15-411. Commissioner of political practices. (1) There is a commissioner of political practices who is appointed as provided in 13-37-102.

(2) The office of the commissioner is attached to the office of the secretary of state for administrative purposes only, as specified in 2-15-121, except that the provisions of subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e), and (3)(a) of 2-15-121 do not apply.

History: **En. 23-4785 by Sec. 10, Ch. 480, L. 1975; amd. Sec. 62, Ch. 365, L. 1977; amd. Sec. 1, Ch. 461, L. 1977; R.C.M. 1947, 23-4785(part).**

Compiler's Comments

1980 Name Change: Section 19, Initiative No. 85, 1980, provided: "The office of the commissioner of campaign finances and practices, created by 13-37-102, shall be known as the office of the commissioner of political practices." The code commissioner has changed the name in this section accordingly. See 1-11-101(2)(g).

2-15-412. Board of state canvassers. The board of state canvassers created in 13-15-502 is allocated to the office of the secretary of state for administrative purposes only as prescribed in 2-15-121.

History: **En. 82A-2102 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-2102; amd. Sec. 12, Ch. 184, L. 1979.**

2-15-413. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. by Code Commissioner, 1979; amd. Sec. 13, Ch. 184, L. 1979.**

Part 5

Attorney General

2-15-501. General duties. It is the duty of the attorney general:

(1) to attend the supreme court and prosecute or defend all causes to which the state or any officer thereof in his official capacity is a party and all causes to which any county may be a party unless the interest of the county is adverse to the state or some officer thereof acting in his official capacity;

(2) after judgment in any of the causes referred to in the preceding subsection, to direct the issuing of such process as may be necessary to carry the same into execution;

(3) to account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county;

(4) to keep a register of all cases in which he is required to appear, which must during business hours be open to the inspection of the public. The register must show the county, district, and court in which the cases have been instituted and tried and whether they are civil or criminal. If civil, the register must show the nature of the demand, the stage of proceedings and,

when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not. If not satisfied, the register must show the return of the sheriff. If criminal, the register must show the nature of the crime, the mode of prosecution, the stage of proceedings and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention. The attorney general must deliver the same to his successor in office.

(5) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney must, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

(6) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of his duties;

(7) to give his opinion in writing, without fee, to the legislature or either house thereof, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. He shall give any such opinion within 3 months following the date it is requested unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion shall be controlling unless overruled by a state district court or the supreme court.

(8) to bid upon and purchase in the name of the state and under the direction of the board of investments any property offered for sale under execution issued upon judgments in favor of or for the use of the state and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases;

(9) whenever the property of a judgment debtor in any judgment mentioned in the preceding subsection has been sold under a prior judgment or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, under the direction of the board of investments, to redeem such property from such prior judgment, lien, or encumbrance. All sums of money necessary for such redemption must be paid out of any money appropriated for such purposes.

(10) when in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must be paid out of any appropriations for the prosecution of delinquents;

(11) to discharge the duties of a member of the board of examiners and state board of land commissioners and other duties prescribed by law;

(12) to report to the governor, at the time prescribed by 2-7-102, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from county attorneys;

(13) to prescribe the form of blanks to be used by the clerks of the district courts in issuing commitments to the several state institutions, admission to which requires a court commitment.

History: (1) thru (12)Ap. p. Sec. 460, Pol. C. 1895; re-en. Sec. 193, Rev. C. 1907; re-en. Sec. 199, R.C.M. 1921; Cal. Pol. C. Sec. 470; re-en. Sec. 199, R.C.M. 1935; amd. Sec. 89, Ch. 199, L. 1965; amd. Sec. 13, Ch. 344, L. 1973; amd. Sec. 1, Ch. 257, L. 1975; amd. Sec. 1, Ch. 118, L. 1977; amd. Sec. 12, Ch. 343, L. 1977; Sec. 82-401, R.C.M. 1947; Ap. p. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; Sec. 16-3101, R.C.M. 1947; (13)En. Sec. 1, Ch. 158, L. 1925; re-en. Sec. 199.1, R.C.M. 1935; Sec. 82-402, R.C.M. 1947; R.C.M. 1947, 16-3101(part), 82-401, 82-402.

Compiler's Comments

Interim Study of Justice System: SJR 2 (1981) requested an interim study of the Montana criminal justice system, including alternative ways and effects of redistricting Montana's district court system, establishing a statewide district attorney system for criminal prosecutions, and providing for a statewide system of representation for indigents accused of crimes and required a report of the findings of the study to the legislature. The Legislative Council designated the Joint Subcommittee on Judiciary to conduct the study.

2-15-502. Qualification of assistants. Each assistant attorney general must be duly licensed to practice law in the state of Montana at the time of his appointment.

History: En. Sec. 2, p. 96, L. 1901; en. Sec. 2, Ch. 13, L. 1907; Sec. 197, Rev. C. 1907; re-en. Sec. 203, R.C.M. 1921; re-en. Sec. 203, R.C.M. 1935; R.C.M. 1947, 82-406.

Part 6

State Auditor

2-15-601. State auditor. There is a state auditor as provided in Article VI, section 1, of the Montana constitution.

History: En. by Code Commissioner, 1979.

2-15-602. Deputy state auditor. (1) The state auditor shall appoint a deputy who in the absence of the principal or in the case of vacancy in his office shall perform all the duties of office until such disability be removed or vacancy be filled.

(2) Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

History: En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 82-601(part).

Part 7

Superintendent of Public Instruction

2-15-701. Superintendent of public instruction. There is a superintendent of public instruction as provided in Article VI, section 1, of the Montana constitution. The election, qualifications, and term of office of the superintendent are provided for in Title 20, chapter 3.

History: En. by Code Commissioner, 1979.

Parts 8 and 9 reserved

Part 10

Department of Administration

Part Compiler's Comments

Reorganization Procedure: Section 18, Ch. 274, L. 1981, provided: "The provisions of sections 2-15-131 through 2-15-137 govern the merger of the department of community affairs, the department of professional and occupational licensing, and the department of business regulation into the department of commerce and the transfer of the various functions contained in this act."

2-15-1001. Department of administration — head. There is created a department of administration. The department head is a director of administration appointed by the governor in accordance with 2-15-111.

History: En. 82A-201 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-201.

2-15-1002. Ex officio state treasurer. The director of the department of administration shall serve as ex officio state treasurer.

History: En. Sec. 1, Ch. 136, L. 1973; amd. Sec. 1, Ch. 468, L. 1977; R.C.M. 1947, 82A-214.

2-15-1003 and 2-15-1004 reserved.

2-15-1005. Board of investments — allocation — composition — quasi-judicial. (1) There is a board of investments.

(2) Except as otherwise provided in this subsection, the board is allocated to the department for administrative purposes only as prescribed in 2-15-121. Personnel for the board shall be appointed by the department subject to the approval of the board, except that the board may employ an investment officer and assistant investment officer who will have general responsibility for management of the board's staff and directing investment activity. The investment officer and assistant investment officer serve at the pleasure of the board, and the board may prescribe the duties and annual salary of both.

(3) The board is composed of five members, appointed by the governor as prescribed in 2-15-124, informed and experienced in the subject of investments.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

History: En. 82A-204 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 90, Ch. 326, L. 1974; R.C.M. 1947, 82A-204(1) thru (3), (5); amd. Sec. 1, Ch. 365, L. 1979.

2-15-1006. Merit system council — allocation — composition. (1) There is a merit system council.

(2) The council is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the council may hire its own personnel, and 2-15-121(2)(d) does not apply.

(3) The council is composed of three members appointed by the governor for 6-year overlapping terms. The governor shall appoint the members upon the recommendation of the agencies which participate in the joint merit system and in accordance with federal requirements.

(4) Members shall be compensated and reimbursed as are members of advisory councils in 2-15-122(5).

History: En. 82A-206 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 91, Ch. 326, L. 1974; R.C.M. 1947, 82A-206.

2-15-1007. Board of examiners — allocation. (1) The governor, secretary of state, and attorney general constitute a board of examiners.

(2) The meetings of the board are held at the seat of government on the third Monday in each month and such other times as the president may call it together.

(3) The governor is the president and the secretary of state is the secretary of said board, and in the absence of either, an officer pro tempore may be elected from their number.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1)En. Sec. 232 to 253 were enacted as Sections 1 to 21, pp. 183 to 187, L. 1891; re-en. Secs. 680 to 701, Pol. C. 1895; appearing as Secs. 226 to 247, Rev. C. 1907; re-en. Sec. 232, R.C.M. 1921; Cal. Pol. C. Secs. 654-685; re-en. Sec. 232, R.C.M. 1935; amd. Sec. 7, Ch. 97, L. 1961; Sec. 82-1101, R.C.M. 1947; (2), (3)En. Sec. 227, Rev. C. 1907; re-en. Sec. 233, R.C.M. 1921; re-en. Sec. 233, R.C.M. 1935; Sec. 82-1102, R.C.M. 1947; (4)En. 82A-207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 92, Ch. 326, L. 1974; amd. Sec. 14, Ch. 343, L. 1977; Sec. 82A-207, R.C.M. 1947; R.C.M. 1947, 82-1101(part), 82-1102, 82A-207.

2-15-1008. Renumbered 2-15-1814. Sec. 11, Ch. 274, L. 1981.

2-15-1009. Public employees' retirement board — terms — allocation. (1) There is a public employees' retirement board.

(2) The board consists of five members appointed by the governor. The members are:

(a) three public employees who are members of a public retirement system (not more than one of these members may be an employee of the same department); and

(b) two members at large.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall be paid their travel expenses as provided for in 2-18-501 through 2-18-503, as amended, and members of the board who are not members of the public retirement system shall be entitled, in addition to travel expenses, to compensation as established for a quasi-judicial board in 2-15-124.

History: En. 82A-210 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 190, L. 1974; amd. Sec. 94, Ch. 326, L. 1974; amd. Sec. 3, Ch. 132, L. 1977; amd. Sec. 22, Ch. 453, L. 1977; R.C.M. 1947, 82A-210.

2-15-1010. Teachers' retirement board — terms — allocation. (1) There is a teachers' retirement board.

(2) The board consists of six members appointed by the governor, as follows:

(a) the superintendent of public instruction;

(b) two persons appointed from the teaching profession who are members of the retirement system;

(c) two persons appointed as representatives of the public;

(d) one member who shall be a retired teacher who was a member of the retirement system at the time of retirement.

(3) Each appointed member of the board shall serve a term of 4 years. Each appointed member shall take and subscribe to the oath prescribed by

section 3 of Article III of the constitution of the state. The oath shall be filed in the office of the secretary of state.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

History: En. 82A-212 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 326, L. 1974; amd. Sec. 1, Ch. 45, L. 1977; R.C.M. 1947, 82A-212.

2-15-1011. State agency for surplus property. There is hereby created and established a Montana state agency for surplus property which shall be administered by the department of administration. The director of the department may prescribe the duties of such personnel as are needed to carry out the duties of Title 18, chapter 5, part 2.

History: En. Sec. 1, Ch. 136, L. 1953; amd. Sec. 1, Ch. 478, L. 1977; R.C.M. 1947, 82-3101.

2-15-1012. Repealed. Sec. 14, Ch. 555, L. 1979.

History: En. Sec. 3, Ch. 438, L. 1973; R.C.M. 1947, 59-1503(1), (2).

2-15-1013. Records committee — composition and meetings. (1) There is a committee to be known as the state records committee composed of representatives of:

(a) the department of administration;
(b) the legislative auditor;
(c) the attorney general; and
(d) the Montana historical society.

(2) The representatives are to be designated by the head of the respective agencies, and their appointments shall be submitted in writing to the director of the department of administration.

(3) The committee shall meet at least quarterly.

(4) Committee members shall serve without additional salary but are entitled to reimbursement for travel expense incurred while engaged in committee activities as provided for in 2-18-501 through 2-18-503. Such expenses shall be paid from the appropriations made for operation of their respective agencies.

History: En. 82-3338, by Sec. 7, Ch. 339, L. 1977; R.C.M. 1947, 82-3338(1), (2), (4).

2-15-1014. Office of workers' compensation judge — allocation — appointment — salary. (1) There is the office of workers' compensation judge. The office is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy shall be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but shall be accorded retirement benefits under the public employees' retirement system.

History: **En. 82A-1016 by Sec. 1, Ch. 537, L. 1975; R.C.M. 1947, 82A-1016.**

2-15-1015. State tax appeal board. There is a state tax appeal board as provided in Title 15, chapter 2.

History: **En. by Code Commissioner, 1979.**

2-15-1016. State employee group benefits advisory council — composition. (1) The department shall create a state employee group benefits advisory council under 2-15-122.

(2) The members of the advisory council shall be selected from a diverse group in order to adequately represent the interests of state employees.

History: **En. Sec. 3, Ch. 555, L. 1979.**

2-15-1017. Publishing policy committee. (1) There is a publishing policy committee.

(2) The committee consists of the budget director, the director of administration, and a director of a state department designated by the governor.

History: **En. Sec. 3, Ch. 646, L. 1979.**

Part 11

Department of Community Affairs (Abolished, Sec. 6, Ch. 274, L. 1981)

Part Compiler's Comments

Department of Community Affairs Abolished — Certain Functions Transferred to Department of Commerce: Section 6, Ch. 274, L. 1981, provided: "(1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce:

(a) allocation of state funds for public transportation in 7-14-102;

(b) acting as state administering agency for the Montana Economic Land Development Act under Title 15, chapter 24, part 13;

(c) relating to aviation and contained in 15-70-204, 15-70-221, Title 67, and 80-8-204;

(d) assisting development credit corporations, contained in 32-4-201;

(e) relating to recommendations concerning major facility siting and contained in 75-20-211, 75-20-216, and 75-20-501;

(f) prescribing standards for monumentation under 76-3-403;

(g) establishing minimum subdivision review rules under 76-3-502 and 76-4-129;

(h) planning and developing the state economy, contained in Title 90, chapter 1, part 1;

(i) furnishing advice concerning secondary industry development under 90-5-113; and

(j) furnishing facilities and information to the coal board under 90-6-204 and 90-6-207.

(3) Unless inconsistent with this act, any reference to the "department of community affairs" or "department" (of community affairs) in the sections listed in subsection (2) and in 2-8-103 are changed to "department of commerce" or "department" (of commerce).

(4) The divisions of the department of community affairs are abolished. Any reference in the sections listed in subsection (2) to a division in the department of community affairs is changed to "department" (of commerce).

(5) The governor may by executive order assign to a department in a manner consistent with this act functions allocated to the department of community affairs by the 47th legislature and not transferred by this act."

Functions of Department of Community Affairs Transferred to Department of Administration: Section 7, Ch. 274, L. 1981, provided: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in Title 2, chapter 7, part 5; 2-9-702; 2-9-802; 7-1-4121; 7-1-4130; 7-1-4145; 7-1-4147; 7-1-4148; Title 7, chapter 2, part 49; 7-3-146; 7-3-153; 7-4-2634; 7-5-2132; 7-5-4124; 7-6-207; 7-6-209; 7-6-210; 7-6-2114; 7-6-2203; 7-6-2212; 7-6-2302; 7-6-2311; 7-6-2314; 7-6-2315; 7-6-2322; 7-6-4111; 7-6-4113; 7-6-4205; 7-6-4221; 7-6-4225; 7-6-4233;

7-7-123; 17-6-103; 19-11-206; 19-11-303; 19-11-403; 20-1-212; 20-9-203; 20-9-344; 20-9-504; 61-2-208; 85-7-1616; 85-7-1913; 85-7-2027; and 85-9-611 and disposing of oil and gas severance taxes in 15-36-112 are transferred to the department of administration.

(2) Unless inconsistent with this act, any reference to "department of community affairs" in the sections listed in subsection (1) or to "municipal audit division" or "department" (of community affairs) in those sections or related reference to "department" (of community affairs) in related sections is changed to "department of administration"."

Boards Reallocated to Department of Commerce: Section 12, Ch. 274, L. 1981, provided: "The board of county printing, the board of aeronautics, the coal board, and the office of state coordinator of Indian affairs, allocated to the department of community affairs under 2-15-1102 through 2-15-1104 [2-15-1811, 2-15-1812, and 2-15-1821] and 2-15-1111 [2-15-1813], are reallocated to the department of commerce. The code commissioner shall recodify those sections in Title 2, chapter 15, part 18, and change internal name and section number references accordingly."

Reorganization Procedure: Section 18, Ch. 274, L. 1981, provided: "The provisions of sections 2-15-131 through 2-15-137 govern the merger of the department of community affairs, the department of professional and occupational licensing, and the department of business regulation into the department of commerce and the transfer of the various functions contained in this act."

2-15-1101. Repealed. Sec. 22, Ch. 274, L. 1981.

History: **En. 82A-901 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 213, L. 1975; R.C.M. 1947, 82A-901.**

2-15-1102. Renumbered 2-15-1811. Sec. 12, Ch. 274, L. 1981.

2-15-1103. Renumbered 2-15-1812. Sec. 12, Ch. 274, L. 1981.

2-15-1104. Renumbered 2-15-1821. Sec. 12, Ch. 274, L. 1981.

2-15-1105 through 2-15-1110 reserved.

2-15-1111. Renumbered 2-15-1813. Sec. 12, Ch. 274, L. 1981.

2-15-1112. Renumbered 90-11-101. Sec. 20, Ch. 274, L. 1981.

2-15-1113. Renumbered 90-11-102. Sec. 20, Ch. 274, L. 1981.

Part 12

Department of Military Affairs

2-15-1201. Department of military affairs — head. There is a department of military affairs. The department head is the adjutant general of the state, who shall be appointed and serve in the same manner as are directors in 2-15-111. In addition, the adjutant general shall have the qualifications as prescribed in 2-15-1202.

History: **En. 82A-1401 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 70, Ch. 94, L. 1974; R.C.M. 1947, 82A-1401.**

2-15-1202. Adjutant general — qualifications — salary. (1) The adjutant general shall:

(a) have the rank of major general;

(b) be selected from the active list of the national guard of this state;

(c) be federally recognized in the rank of lieutenant colonel or higher, immediately preceding his appointment;

(d) have had at least 10 years of service as an officer of the active national guard of this state during the 15 years immediately preceding his appointment.

(2) A salary may not be paid to the adjutant general by the state when he is on extended active duty in federal service or is receiving pay as a civilian employee of the federal government.

(3) If, by reason of call or draft of officers of the Montana national guard into federal service, there is no officer having the qualifications as set forth in this section for adjutant general, then any officer of the national guard may be appointed as acting adjutant general.

History: En. 82A-1405 by Sec. 71, Ch. 94, L. 1974; R.C.M. 1947, 82A-1405.

2-15-1203. Assistant adjutant generals. (1) The adjutant general shall appoint, with the approval of the governor, an assistant adjutant general for the army national guard to be selected from the active list of the army national guard and an assistant adjutant general for the air national guard to be selected from the active list of the air national guard.

(2) Each assistant adjutant general shall have the qualifications set forth in 2-15-1202 for appointment as adjutant general. However, he shall have the rank of brigadier general.

History: En. 82A-1406 by Sec. 72, Ch. 94, L. 1974; R.C.M. 1947, 82A-1406.

2-15-1204. Division of disaster and emergency services. A division of disaster and emergency services is established in the department of military affairs.

History: En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977; R.C.M. 1947, 77-2305.1(part(1)).

Part 13

Department of Revenue

2-15-1301. Department of revenue — head. There is a department of revenue. The department head is the director of revenue.

History: En. 82A-1801 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 62, Ch. 391, L. 1973; R.C.M. 1947, 82A-1801.

2-15-1302. Director of revenue. (1) There is the position of director of revenue.

(2) The director of revenue shall be appointed and serve as provided for directors in 2-15-111.

(3) The director is the chief administrative officer of the department.

History: En. 82A-1804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 64, Ch. 391, L. 1973; R.C.M. 1947, 82A-1804(part).

2-15-1303 through 2-15-1310 reserved.

2-15-1311. Advisory council for Multistate Tax Compact. The director of revenue shall appoint an advisory council for the purpose of complying with Article VI, section 1(b) of the Multistate Tax Compact. The council shall be appointed in accordance with the provisions of 2-15-122.

History: En. 82A-1803 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 63, Ch. 391, L. 1973; R.C.M. 1947, 82A-1803.

Part 14 reserved

Part 15

Education

2-15-1501. State board of education. The state board of education is created in Article X, section 9, subsection (1) of the Montana constitution and is provided for in Title 20, chapter 2.

History: **En. 82A-501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 4, Ch. 51, L. 1974; R.C.M. 1947, 82A-501.**

2-15-1502 through 2-15-1504 reserved.

2-15-1505. Board of regents of higher education. The board of regents of higher education created in Article X, section 9, subsection (2), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of regents.

History: **En. Sec. 2, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(2).**

2-15-1506. Commissioner of higher education. (1) There is a commissioner of higher education who is appointed by the board of regents.

(2) The board of regents shall prescribe the term of the commissioner.

History: **En. Sec. 3, Ch. 344, L. 1973; R.C.M. 1947, 75-5611(part).**

2-15-1507. Board of public education. The board of public education created in Article X, section 9, subsection (3), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of public education.

History: **En. Sec. 2, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(1).**

2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy. (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than four may be from one congressional district.

(b) Not more than four may be affiliated with the same political party.

(c) The terms of members appointed to each board shall be 7 years except as provided in subsection (3).

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and such appointment shall preserve the balance required by subsections (a) and (b) above.

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before he may serve as a member of either board.

(3) One seat of the appointed members on the board of regents shall be reserved for membership by a student appointed by the governor. The student shall be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member shall be determined by the governor for not less than 1 year and not more than 4 years. The provisions of subsections (1)(a) and (1)(b) of this section shall not apply to the student member and shall not affect the balance of the remaining appointive membership on the board of regents.

History: En. Secs. 2, 11, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(part), 75-5619.

2-15-1509 and 2-15-1510 reserved.

2-15-1511. Agencies allocated to state board of education. The state historical society, the Montana arts council, and the state library commission are allocated to the state board of education for purposes of planning and coordination. Budget requests to the state for these agencies shall be included with the budget requests of the state board of education; however, the governance, management, and control of the respective agencies shall be vested respectively in the board of trustees of the state historical society, the Montana arts council, and the state library commission.

History: En. 82A-501.1 by Sec. 5, Ch. 51, L. 1974; R.C.M. 1947, 82A-501.1.

2-15-1512. Boards and offices associated with state historical society. (1) (a) There is a board of trustees of the state historical society which is created in Title 22, chapter 3.

(b) The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed by law.

(2) (a) There is a preservation review board within the Montana historical society consisting of nine members.

(b) Members shall be appointed by the governor in the following manner:

(i) five professional persons recognized in the fields of archaeology, history, architecture, or architectural history; however, no more than two members may be appointed from any one of these fields;

(ii) a professional paleontologist;

(iii) the state liaison officer for the federal land and water conservation fund;

(iv) two members of the public who have actively demonstrated an interest in historic preservation matters.

(c) Each member shall serve a 4-year term. A member may be reappointed.

(d) Unless he is a full-time salaried officer or employee of this state or of a political subdivision, each member is entitled to be paid $25 a day for each day in which he is actually and necessarily engaged in board duties and to reimbursement for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the performance of board duties.

(3) (a) There is established the historic preservation office within the Montana historical society, to consist of an historic preservation officer and a qualified professional staff.

(b) The historic preservation officer is appointed by the governor.

History: (1)En. 82A-507 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 51, L. 1974; amd. Sec. 1, Ch. 203, L. 1975; amd. Sec. 23, Ch. 453, L. 1977; R.C.M. 1947, 82A-507(1), (2); (2), (3)En Secs. 1, 3, 6, Ch. 563, L. 1979.

2-15-1513. Montana arts council. (1) There is a Montana arts council which is created in Title 22, chapter 2.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of council members remain as prescribed by law.

History: En. 82A-508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 51, L. 1974; R.C.M. 1947, 82A-508.

2-15-1514. State library commission. (1) There is a state library commission which is created in Title 22, chapter 1.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members remain as prescribed by law.

History: En. 82A-509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 51, L. 1974; R.C.M. 1947, 82A-509.

2-15-1515. Commission on federal higher education programs. (1) There is a commission on federal higher education programs.

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university. Membership on the commission by these representatives is contingent upon their continued status as trustees.

(3) The non ex officio members shall serve for terms as provided in 2-15-124(2).

(4) The chairman of the board of regents of higher education is chairman of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in 2-15-121.

(7) The commission members are entitled to compensation as provided in 2-15-124(7).

History: En. 82A-512 by Sec. 3, Ch. 220, L. 1974; R.C.M. 1947, 82A-512.

2-15-1516. Fertilizer advisory committee. (1) There is a fertilizer advisory committee.

(2) The committee consists of five members. The members shall represent the fertilizer users of the state. The members shall be appointed by the dean of agriculture of Montana state university with the approval of the chairman of the Montana house of representatives agriculture and irrigation committee, the chairman of the Montana senate agriculture committee, the chairman of the Montana plant food association or its successor organization, the director of the cooperative extension service, and the director of the Montana agricultural experiment station.

(3) The members shall serve staggered 5-year terms. A member may not serve more than 7 consecutive years.

History: En. Sec. 4, Ch. 397, L. 1971; Sec. 3-1732, R.C.M. 1947; amd. and redes. 82A-513 by Sec. 99, Ch. 218, L. 1974; R.C.M. 1947, 82A-513.

2-15-1517. Financial assistance program advisory council. (1) There is a resident student financial assistance program advisory council appointed by the board of regents.

(2) The advisory council consists of:

(a) three practicing financial aid officers;

(b) one chief administrator of a postsecondary educational institution;

(c) one chief fiscal officer of a postsecondary educational institution; and

(d) one student enrolled full time at a postsecondary educational institution.

(3) No more than one member of the advisory council may be from the same postsecondary institution.

(4) The advisory council serves at the pleasure of the board of regents.

History: En. 75-9405 by Sec. 5, Ch. 515, L. 1977; R.C.M. 1947, 75-9405.

2-15-1518. Director of fire services training school. (1) The board of public education shall appoint the director of the fire services training school.

(2) The director may be removed for cause.

(3) The director must have the following qualifications:

(a) a bachelor's degree in a field of study related to fire protection; or

(b) 5 years' experience in an organized training program as an instructor and 7 years' experience as a firefighter or fire combat officer.

History: En. 75-7721 by Sec. 6, Ch. 104, L. 1977; R.C.M. 1947, 75-7721(part).

2-15-1519. Fire services training advisory council. (1) The board of public education shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council shall include the following:

(a) a fire chief;

(b) a volunteer firefighter;

(c) a paid firefighter;

(d) a fire service instructor;

(e) a person involved in fire prevention;

(f) an engineering representative of the insurance services office;

(g) a representative of the fire protection engineering industry;

(h) a fire control officer recommended by the administrator of the division of forestry.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1) of this section.

(3) Members appointed shall serve for a 4-year term. If a vacancy occurs, a member shall be appointed to fill the unexpired term. A member may be reappointed.

(4) The state fire marshal and director of the fire services training school are ex officio members of the council.

History: En. 75-7718 by Sec. 3, Ch. 104, L. 1977; R.C.M. 1947, 75-7718.

2-15-1520. Guaranteed student loan advisory council — terms, compensation. (1) There is a student loan advisory council appointed by the board of regents.

(2) The council consists of seven members. Each member shall be appointed for a term of 3 years.

(3) Appointments to the council must conform to the following requirements:

(a) One member must be a representative of a private eligible educational institution, as defined in 20-26-1101.

(b) Two members must be representatives of a public eligible educational institution, as defined in 20-26-1101. One must be a representative of higher education, and one must be a representative for the postsecondary vocational-technical centers.

(c) Two members must be representatives of approved lenders.

(d) One member must be a full-time student registered at an eligible educational institution, as defined in 20-26-1101.

(e) One member must be a representative of the office of the commissioner of higher education.

(4) A chairman must be selected by the council from its membership at the first meeting of each fiscal year.

(5) Each member of the council is entitled to compensation and reimbursement for travel expenses as provided in 2-15-122(5).

History: En. Sec. 1, Ch. 691, L. 1979.

Part 16

Department of Professional and Occupational Licensing (Abolished, Sec. 3, Ch. 274, L. 1981)

Part Compiler's Comments

Department of Professional and Occupational Licensing Abolished — Functions Transferred to Department of Commerce: Section 3, Ch. 274, L. 1981, provided: "The department of professional and occupational licensing is abolished and its functions are transferred to the department of commerce. Unless inconsistent with this act, any reference in the MCA, including laws passed by the 47th legislature, to the "department of professional and occupational licensing" or "department" or "director" (of professional and occupational licensing) is changed to the "department of commerce" or "department" or "director" (of commerce)."

Professional and Occupational Licensing Boards — Reallocation: Section 4, Ch. 274, L. 1981, provided: "All boards allocated to the department of professional and occupational licensing under Title 2, chapter 15, part 16, are reallocated to the department of commerce under Title 2, chapter 15, part 18. The code commissioner shall recodify those sections as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, apply to those sections. The code commissioner shall change internal name and section number references accordingly."

Reorganization Procedure: Section 18, Ch. 274, L. 1981, provided: "The provisions of sections 2-15-131 through 2-15-137 govern the merger of the department of community affairs, the department of professional and occupational licensing, and the department of business regulation into the department of commerce and the transfer of the various functions contained in this act."

2-15-1601. Repealed. Sec. 22, Ch. 274, L. 1981.

History: En. 82A-1601 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1601.

2-15-1602 through 2-15-1604 reserved.

2-15-1605. Renumbered 2-15-1841. Sec. 4, Ch. 274, L. 1981.

2-15-1606. Renumbered 2-15-1842. Sec. 4, Ch. 274, L. 1981.

2-15-1607. Repealed. Sec. 6, Ch. 87, L. 1981.

History: (1) thru (3)En. Sec. 1, p. 48, L. 1901; rep. and re-en. Sec. 1, Ch. 51, L. 1905; re-en. Sec. 1594, Rev. C. 1907; re-en. Sec. 3125, R.C.M. 1921; re-en. Sec. 3125, R.C.M. 1935; Sec. 66-1401, R.C.M. 1947; amd. and redes. 82A-1602.20 by Sec. 140, Ch. 350, L. 1974; Sec. 82A-1602.20, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.20; amd. Sec. 3, Ch. 247, L. 1981.

Compiler's Comments

Preamble: The preamble to SB 393 (Ch. 87, L. 1981) read:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Osteopathic Physicians and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Osteopathic Physicians be terminated and that regulation of osteopathy be transferred to the Board of Medical Examiners."

2-15-1608. Repealed. Sec. 10, Ch. 470, L. 1981.

History: (1), (2)En. 82A-1602.6 by Sec. 356, Ch. 350, L. 1974; amd. Sec. 4, Ch. 176, L. 1977; Sec. 82A-1602.6, R.C.M. 1947; (3)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.6; amd. Sec. 2, Ch. 244, L. 1981; amd. Sec. 4, Ch. 247, L. 1981.

Compiler's Comments

Preamble: The preamble to SB 392 (Ch. 470, L. 1981) read:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, terminates the Board of Podiatry Examiners and requires a performance evaluation by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Podiatry Examiners be terminated, and that regulation of podiatrists be transferred to the Board of Medical Examiners." See State of Montana Report to the Legislature, Sunset Review Board of Podiatry Examiners, 79SS-8, Legislative Auditor, 1980.

Transfer of Funds and Records: Section 7, Ch. 470, L. 1981, provided: "By the effective date of this act, all funds and records of the board of podiatry examiners shall be transferred to the board of medical examiners."

Rules Remain in Effect: Section 8, Ch. 470, L. 1981, provided: "Existing rules of the board of podiatry examiners remain in effect unless amended or repealed by the board of medical examiners."

Effective Date: Section 11, Ch. 470, L. 1981, provided: "This act is effective July 1, 1981, and the provisions of 2-8-121 do not apply to the board of podiatry examiners."

2-15-1609. Renumbered 2-15-1843. Sec. 4, Ch. 274, L. 1981.

2-15-1610. Renumbered 2-15-1844. Sec. 4, Ch. 274, L. 1981.

2-15-1611. Renumbered 2-15-1845. Sec. 4, Ch. 274, L. 1981.

2-15-1612. Renumbered 2-15-1846. Sec. 4, Ch. 274, L. 1981.

2-15-1613. Renumbered 2-15-1847. Sec. 4, Ch. 274, L. 1981.

2-15-1614. Renumbered 2-15-1848. Sec. 4, Ch. 274, L. 1981.

2-15-1615. Renumbered 2-15-1849. Sec. 4, Ch. 274, L. 1981.

2-15-1616. Renumbered 2-15-1850. Sec. 4, Ch. 274, L. 1981.

2-15-1617. Renumbered 2-15-1851. Sec. 4, Ch. 274, L. 1981.

2-15-1618. Renumbered 2-15-1852. Sec. 4, Ch. 274, L. 1981.

2-15-1619. Renumbered 2-15-1853. Sec. 4, Ch. 274, L. 1981.

2-15-1620 through 2-15-1624 reserved.

2-15-1625. Renumbered 2-15-1856. Sec. 4, Ch. 274, L. 1981.

2-15-1626. Renumbered 2-15-1857. Sec. 4, Ch. 274, L. 1981.

2-15-1627. Board of massage therapists. *(Terminated — see compiler's comment)*

History: (1) thru (3)En. Sec. 3, Ch. 302, L. 1967; Sec. 66-2903, R.C.M. 1947; amd. and redes. 82A-1602.14 by Sec. 284, Ch. 350, L. 1974; Sec. 82A-1602.14, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.14; amd. Sec. 17, Ch. 247, L. 1981.

Compiler's Comments

Board of Massage Therapists Terminated: The Board of Massage Therapists was not reestablished by the 1981 Legislature, thus it terminated on July 1, 1981, as provided in 2-8-103. Section 2-15-1627 has not been repealed, but the Code Commissioner has not codified it because it is obsolete.

2-15-1628. Renumbered 2-15-1858. Sec. 4, Ch. 274, L. 1981.

2-15-1629 and 2-15-1630 reserved.

2-15-1631. Renumbered 2-15-1861. Sec. 4, Ch. 274, L. 1981.

2-15-1632. Renumbered 2-15-1862. Sec. 4, Ch. 274, L. 1981.

2-15-1633 through 2-15-1640 reserved.

2-15-1641. Renumbered 2-15-1866. Sec. 4, Ch. 274, L. 1981.

2-15-1642. Repealed. Sec. 14, Ch. 497, L. 1979.

History: (1) thru (4)En. 82A-1602.23 by Sec. 360, Ch. 350, L. 1974; amd. Sec. 1, Ch. 378, L. 1977; Sec. 82A-1602.23, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.23.

2-15-1643. Repealed. Sec. 195, Ch. 575, L. 1981.

History: (1) thru (3)En. Sec. 2, Ch. 105, L. 1931; re-en. Sec. 4139, R.C.M. 1935; Sec. 66-2102, R.C.M. 1947; amd. and redes. 82A-1602.1 by Sec. 194, Ch. 350, L. 1974; Sec. 82A-1602.1, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.1.

2-15-1644. Renumbered 2-15-1867. Sec. 4, Ch. 274, L. 1981.

2-15-1645 through 2-15-1650 reserved.

2-15-1651. Renumbered 2-15-1871. Sec. 4, Ch. 274, L. 1981.

2-15-1652. Renumbered 2-15-1872. Sec. 4, Ch. 274, L. 1981.

2-15-1653. Renumbered 2-15-1873. Sec. 4, Ch. 274, L. 1981.

2-15-1654. Renumbered 2-15-1874. Sec. 4, Ch. 274, L. 1981.

2-15-1655. Renumbered 2-15-1875. Sec. 4, Ch. 274, L. 1981.

2-15-1656. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(part); amd. Sec. 19, Ch. 184, L. 1979.

2-15-1657 through 2-15-1660 reserved.

2-15-1661. Repealed. Sec. 1, Ch. 322, L. 1981.

History: (1) thru (3)En. 82A-1602.4 by Sec. 355, Ch. 350, L. 1974; Sec. 82A-1602.4, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.4; amd. Sec. 23, Ch. 247, L. 1981.

Compiler's Comments

Preamble: The preamble to Ch. 322, L. 1981, provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Athletics and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Athletics be abolished." See State of Montana Report to the Legislature, Sunset Review Board of Athletics, 79SS-17, Legislative Auditor, 1980.

Effective Date: Section 2, Ch. 322, L. 1981, provided: "This act is effective July 1, 1981, except that for the purpose of winding up the affairs of the board the sections repealed have effect in accordance with 2-8-121."

2-15-1662. Renumbered 2-15-1881. Sec. 4, Ch. 274, L. 1981.

Part 17

Department of Labor and Industry

Part Compiler's Comments

Division of Employment Security and Certain Bureaus — Name Change: Section 1, Ch. 349, L. 1981, provided: "The division of employment security and its bureaus created in 2-15-1703 and 39-51-306 are abolished. Their functions are continued in the department of labor and industry provided for in Title 2, chapter 15, part 17. Unless inconsistent with this act, any reference in the MCA to "division of employment security", "division" (of employment security), or any bureau of the division of employment security, including "Montana state employment service bureau" or "unemployment insurance bureau", is changed to "department of labor and industry" or "department" (of labor and industry). Consistent with the intent of this section and without changing the meaning, the code commissioner shall remove any redundancies caused by such name changes."

2-15-1701. Department of labor and industry — head. (1) There is a department of labor and industry. As prescribed in Article XII, section 2, of the Montana constitution, the department head is the commissioner of labor and industry.

(2) The commissioner shall be appointed and serve as provided for directors in 2-15-111.

(3) The commissioner shall receive an annual salary in such amount as may be specified by the legislature in the appropriation to the department of labor and industry.

(4) Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana constitution.

History: (1)En. 82A-1001 by Sec. 1, Ch. 272, L. 1971; Sec. 82A-1001, R.C.M. 1947; (2) thru (4)Ap. p. Sec. 2, Ch. 177, L. 1951; Sec. 41-1602, R.C.M. 1947; Ap. p. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967; amd. Sec. 19, Ch. 100, L. 1973; amd. Sec. 6, Ch. 343, L. 1977; Sec. 41-1603, R.C.M. 1947; R.C.M. 1947, 41-1602, 41-1603, 82A-1001(part); amd. Sec. 20, Ch. 184, L. 1979; amd. Sec. 1, Ch. 116, L. 1981.

Compiler's Comments

1981 Amendment: In (2), substituted provision on appointment of commissioner under 2-15-111 for provisions relating to appointment by governor, confirmation by senate, and a term of 4 years and until his successor is appointed and qualified.

2-15-1702. Division of workers' compensation — head. (1) There is a division of workers' compensation within the department. The division head is an administrator appointed by the governor as are directors in accordance with 2-15-111.

(2) The division is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the division may hire its own personnel, and 2-15-121(2)(d) does not apply.

History: En. 82A-1004 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 87, Ch. 23, L. 1975; R.C.M. 1947, 82A-1004(part).

2-15-1703. Repealed. Sec. 5, Ch. 349, L. 1981.

History: En. 82A-1006 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1006.

2-15-1704. Board of labor appeals — allocation — composition — function — quasi-judicial. (1) There is a board of labor appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The board is composed of three members of the public who are not employees of the state government, appointed by the governor as prescribed in 2-15-124.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1008(1) thru (3), (5).

2-15-1705. Board of personnel appeals — allocation — composition — vote necessary for decision — quasi-judicial. (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) The board consists of five members appointed by the governor. Two members shall represent management, two members shall represent employees or employee organizations of the state, and one member shall represent a neutral position.

(4) When the member representing a neutral position is unable to participate in a proceeding before the board, an equal number of management and labor members of the board shall select an individual, who shall be a neutral

person, to serve in the place of the neutral member in that proceeding and he shall participate in the decision in that proceeding. There shall be only one additional neutral person appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.

(5) In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

(6) The board is designated a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(1) thru (3), (5); amd. Sec. 1, Ch. 26, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsections (4) and (5).

Code Commissioner Correction: In subsection (5) changed "a least" to "at least" to correct obvious typographical error.

Effective Date: Section 2, Ch. 26, L. 1981, provided: "This act is effective on passage and approval." Approved March 4, 1981.

2-15-1706. Commission for human rights — allocation — quasi-judicial. (1) There is a commission for human rights.

(2) The commission consists of five members appointed by the governor with the consent of the senate.

(3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 but its members shall be compensated and receive travel expenses as provided for in 37-1-133.

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121, except that the commission may hire its own personnel, may seek and receive private and federal funds in its own name, and may determine all matters of policy concerning the use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section.

History: En. 82A-1015 by Sec. 4, Ch. 283, L. 1974; amd. Sec. 1, Ch. 478, L. 1975; R.C.M. 1947, 82A-1015; amd. Sec. 24, Ch. 247, L. 1981; amd. Sec. 3, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 474 added the language in (3) after "2-15-124".

Preamble — Senate Confirmation: The preamble to Ch. 247, L. 1981, provided: "WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Preamble and Title — Board Compensation and Travel Expenses: The title and preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the compiler's comments under 37-1-133.

Preamble — Sunset Evaluation: The preamble to Ch. 307, L. 1981, provided: "WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Commission for Human Rights and requires a performance evaluation by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Commission for Human Rights be reestablished under existing statutory authority."

Reestablishment: Section 1, Ch. 307, L. 1981, provided: "The commission for human rights is reestablished for 6 years pursuant to 2-8-122 with the existing statutory authority and rules."

Effective Date: Section 3, Ch. 307, L. 1981, provided: "This act is effective on passage and approval." Approved April 9, 1981.

Part 18

Department of Commerce

Part Compiler's Comments

1981 Title: The title to SB 432 (Ch. 274, L. 1981) read: "An act to merge the Department of Professional and Occupational Licensing and certain functions of the Department of Community Affairs with the Department of Business Regulation and to rename that department the Department of Commerce; to allocate certain functions of the Department of Community Affairs to other departments of state government; to generally revise the laws to conform to the merger; to abolish other functions of the Department of Community Affairs, including the state aircraft pool; to provide for a state information and research system; repealing sections 2-15-1101, 2-15-1601, and 67-2-201 through 67-2-205, MCA; and providing effective dates."

Department of Business Regulation Renamed Department of Commerce: Section 2, Ch. 274, L. 1981, provided: "The department of business regulation is renamed the department of commerce. The functions of the department of business regulation are retained by the department of commerce. Unless inconsistent with this act, any reference in the MCA, including laws passed by the 47th legislature, to the "department of business regulation" or "department" or "director" (of business regulation) is changed to the "department of commerce" or "department" or "director" (of commerce)."

Reorganization Procedure: Section 18, Ch. 274, L. 1981, provided: "The provisions of sections 2-15-131 through 2-15-137 govern the merger of the department of community affairs, the department of professional and occupational licensing, and the department of business regulation into the department of commerce and the transfer of the various functions contained in this act."

Severability: Section 21, Ch. 274, L. 1981, was a severability section.

Effective Date — Implementation: Section 23, Ch. 274, L. 1981, provided: "(1) Section 19 is effective on passage and approval of this act.

(2) Sections 1 through 18 and sections 20 through 23 are effective upon signing of the executive order under section 19 or on July 1, 1981, whichever occurs earlier." Approved April 6, 1981. Section 19, Ch. 274, L. 1981 read: "The governor shall by executive order implement the provisions of this act."

Boards and Functions of Department: Chapter 274, L. 1981, reallocated all of the boards of the Department of Professional and Occupational Licensing, all boards and functions of the Department of Business Regulation, all boards and some functions of the Department of Community Affairs, and one board from the Department of Administration to the Department of Commerce, and provided for applicable name changes, renumbering of sections, and internal reference changes. For specific changes see Ch. 274, 1981 Session Laws.

2-15-1801. Department of commerce — head. There is a department of commerce. The department head is a director of commerce appointed by the governor in accordance with 2-15-111.

History: En. 82A-401 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 141, Ch. 431, L. 1975; R.C.M. 1947, 82A-401; amd. Sec. 2, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "commerce" for "business regulation" twice.

2-15-1802. Board of milk control — membership — allocation — quasi-judicial. (1) There is a board of milk control.

(2) The board consists of five members. A member may not be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products. A member may not have held an elective or appointive public office during the 2 years immediately preceding his

appointment, and a member may not hold a public office, either elective or appointive, during his term on the board. Not more than three members may be of the same political party or residents of the same congressional district.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-406 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 143, Ch. 431, L. 1975; R.C.M. 1947, 82A-406.

2-15-1803. State banking board — composition — allocation. (1) There is a state banking board.

(2) The board is composed of seven members, including the director of commerce, or his designee, who is the chairman of the board. The remaining six members of the board shall be appointed with consideration given banks of small, medium, and large size and to geographical distribution. At least one banker member and one public member shall be appointed from each congressional district of the state. Two of the six members shall be active officers in state banks of Montana, one shall be an active officer of a national bank doing business in Montana, and three shall be members of the public, none of whom shall be an officer, director, or shareholder of any state or national bank.

(3) The members shall be appointed by the governor with the consent of the senate for terms of 3 years. Vacancies shall be filled by appointment for the unexpired term. No member other than the director of commerce may serve more than two consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in 2-15-121.

History: En. Sec. 1, Ch. 420, L. 1973; Sec. 5-607, R.C.M. 1947; amd. and redes. 82A-407 by Sec. 21, Ch. 431, L. 1975; R.C.M. 1947, 82A-407; amd. Sec. 3, Ch. 321, L. 1979; amd. Sec. 14, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "director of commerce or his designee" for "director of business regulation" in (2); substituted "director of commerce" for "director of business regulation" in (3).

2-15-1804. Proprietary postsecondary educational advisory council. (1) There is created a proprietary postsecondary educational advisory council.

(2) The council is composed of five members appointed by the governor and two ex officio members. Two members shall represent the Montana proprietary school association, one member shall represent the advisory council for vocational education, one member shall represent the Montana personnel and guidance association, and one member from the public at large who has no connection with education. The ex officio members shall be the superintendent of public instruction and the commissioner of higher education.

(3) Members of the council shall serve for 5 years.

History: En. 75-9205 by Sec. 5, Ch. 296, L. 1974; R.C.M. 1947, 75-9205(part).

2-15-1805 through 2-15-1810 reserved.

2-15-1811. Board of county printing — composition — allocation — compensation. (1) There is a board of county printing.

(2) The board consists of five members appointed by the governor with the consent of the senate for terms of 2 years.

(3) The members are:

(a) two members of the printing industry;

(b) two county commissioners;

(c) one member of the general public.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) The members of the board shall be compensated and reimbursed in the same manner and amount as provided for in 37-1-133.

History: (1) thru (4)En. 82A-904 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 103, Ch. 348, L. 1974; Sec. 82A-904, R.C.M. 1947; (5)En. Sec. 4, Ch. 280, L. 1967; amd. Sec. 59, Ch. 348, L. 1974; Sec. 16-1228, R.C.M. 1947; R.C.M. 1947, 16-1228, 82A-904; amd. Sec. 1, Ch. 247, L. 1981; MCA 1979, 2-15-1102; redes. 2-15-1811 by Sec. 12, Ch. 274, L. 1981; amd. Sec. 2, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 474 substituted the present language of (5) for "(5) The members of the board shall be compensated and reimbursed as are members of advisory councils in 2-15-122".

Board Compensation and Travel Expenses — Preamble and Title: The title and preamble of SB 463 (Ch. 474, L. 1981) which provided for uniform compensation and travel expenses for board members, are located in the compiler's comments under 37-1-133.

Preamble — Senate Confirmation: The preamble to SB 424 (Ch. 247, L. 1981), provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Language Not Codified: Chapter 474, L. 1981, contained the phrase "for boards allocated to the department of professional and occupational licensing" at the end of (5) of 2-15-1102. Chapter 274, L. 1981, instructed the Code Commissioner to change all references to the "department of professional and occupational licensing" to the "department of commerce" and reallocated the board of county printing from the department of community affairs to the department of commerce. With the reallocation and department name change the phrase becomes redundant and hence was not codified.

2-15-1812. Board of aeronautics — qualification — allocation — quasi-judicial. (1) There is a board of aeronautics.

(2) The board consists of seven members. The members are:

(a) one member of the Montana pilots' association;

(b) one member of the Montana chamber of commerce;

(c) one member of the municipal league;

(d) one member of the county commissioners association;

(e) one person actively engaged in aviation education in this state;

(f) one person representative of interstate commercial airline operators, who must at the time of appointment be an employee or official of an interstate commercial airline operator and a resident of this state;

(g) one person who must at the time of appointment be an active base operator in this state, or an official of a base operator in this state, of flying services or flying schools.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: **En. 82A-905 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 104, Ch. 348, L. 1974; R.C.M. 1947, 82A-905; MCA 1979, 2-15-1103; redes. 2-15-1812 by Sec. 12, Ch. 274, L. 1981.**

2-15-1813. Office of state coordinator of Indian affairs. (1) There is an office of state coordinator of Indian affairs. The office is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(2) The coordinator shall be appointed by the governor from a list of five qualified Indian applicants agreed upon by the tribal councils of the respective Indian tribes of the state and shall serve at the pleasure of the governor.

History: **En. Sec. 2, Ch. 203, L. 1951; amd. Sec. 12, Ch. 237, L. 1967; amd. Sec. 2, Ch. 319, L. 1969; amd. Sec. 2, Ch. 160, L. 1974; R.C.M. 1947, 82-2702; amd. Sec. 14, Ch. 184, L. 1979; MCA 1979, 2-15-1111; amd. and redes. 2-15-1813 by Sec. 12, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of community affairs" in (1).

Cross-References

Indian affairs — planning and coordination, Title 90, ch. 11.

Duties of state coordinator of Indian affairs, 90-11-102.

2-15-1814. Board of housing — allocation — composition — quasi-judicial. (1) There is a board of housing.

(2) The board consists of seven members appointed by the governor as provided in 2-15-124. The members shall be informed and experienced in housing, economics, or finance.

(3) The board shall elect a chairman and other necessary officers.

(4) The board is designated a quasi-judicial board for purposes of 2-15-124.

(5) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(6) In compliance with the state pay plan, the department shall provide all staff and services to the board as are determined by the board in conjunction with the department to be necessary for the purposes of carrying out the board's programs. The department shall assess the board for reasonable costs.

(7) A member of the board shall not be deemed to have a conflict of interest under the provisions of 2-2-201 merely because the member is a stockholder, officer, or employee of a lending institution who may participate in the board's programs.

History: **En. 82A-224 by Sec. 2, Ch. 163, L. 1977; R.C.M. 1947, 82A-224; amd. Sec. 3, Ch. 143, L. 1979; MCA 1979, 2-15-1008; redes. 2-15-1814 by Sec. 11, Ch. 274, L. 1981; amd. Sec. 12, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of administration" in (5).

Board of Housing — Reallocated to Department of Commerce: Section 11(1), Ch. 274, provided: "The board of housing created in 2-15-1008 [now 2-15-1814] and allocated to the department of administration is reallocated to the department of commerce. The code commissioner shall recodify that section in Title 2, chapter 15, part 18, and change internal name and section number references accordingly."

2-15-1815 through 2-15-1820 reserved.

2-15-1821. Coal board — allocation — composition. (1) There is a coal board composed of seven members.

(2) The coal board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(3) The governor shall appoint a seven-member coal board, as provided under 2-15-124.

(4) (a) The members of the coal board are selected as follows:

(i) two from the impact areas; and

(ii) two with expertise in education.

(b) The governor shall further, in making these appointments, consider people from these fields:

(i) business;

(ii) engineering;

(iii) public administration; and

(iv) planning.

(5) No more than four members may be residents of the same congressional district.

History: En. 50-1704 by Sec. 5, Ch. 502, L. 1975; amd. Sec. 6, Ch. 540, L. 1977; R.C.M. 1947, 50-1804; MCA 1979, 2-15-1104; amd. and redes. 2-15-1821 by Sec. 12, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of community affairs" in (2).

2-15-1822. Hard-rock mining impact board. (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) The hard-rock mining impact board shall include among its members:

(a) three persons who reside in an area impacted by large-scale mineral development;

(b) no more than three persons from the same congressional district;

(c) a representative of the hard-rock mining industry;

(d) a representative of a major financial institution in Montana;

(e) an elected school district trustee;

(f) an elected county commissioner;

(g) a member of the public-at-large.

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state, and the board shall elect a chairman from among its members.

History: En. Sec. 1, Ch. 617, L. 1981.

Compiler's Comment

1981 Title: The title to HB 718 (Ch. 617, L. 1981) read: "An act to create the hard-rock mining impact board; to require mineral developers to submit an economic impact plan to the board; to authorize the board to award grants to impacted units of local government; to provide for tax prepayment for large-scale mineral developments; to provide for the issuance of education impact bonds; amending sections 15-16-201 and 82-4-335, MCA; and providing an immediate effective date."

Severability: Section 15, Ch. 617, L. 1981, was a severability section.

Effective Date: Section 16, Ch. 617, L. 1981, provided: "This act is effective on passage and approval." Approved May 18, 1981.

Coordination Clause: Section 14, Ch. 617, L. 1981, was a coordination provision in light of SB 432, which created the department of commerce, and SB 344, which had hard-rock mining impact provisions.

2-15-1823 through 2-15-1840 reserved.

2-15-1841. Board of medical examiners. (1) There is a Montana state board of medical examiners.

(2) The board consists of nine members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) five members having the degree of doctor of medicine;

(b) one member having the degree of doctor of osteopathy;

(c) one member who is a licensed podiatrist; and

(d) two members of the general public who are not medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member shall be a citizen of the United States. Each member, except for public members, shall have been licensed and shall have practiced medicine in this state for at least 5 years and shall have been a resident of this state for at least 5 years.

(5) Members shall serve staggered 4-year terms. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (5)En. Sec. 4, Ch. 338, L. 1969; amd. Sec. 2, Ch. 203, L. 1971; Sec. 66-1013, R.C.M. 1947; amd. and redes. 82A-1602.15 by Sec. 92, Ch. 350, L. 1974; amd. Sec. 1, Ch. 83, L. 1975; Sec. 82A-1602.15, R.C.M. 1947; (6)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 83, L. 1975; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.15; amd. Sec. 15, Ch. 184, L. 1979; amd. Sec. 3, Ch. 243, L. 1981; MCA 1979, 2-15-1605; redes. 2-15-1841 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 470, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 243 increased the number of board members from seven to eight; decreased members having degree of doctor of medicine from six to five; added two members of the general public; deleted "except for public members" after "each member" in the third sentence of (4); deleted "however the year requirement of practice and residency shall be waived for the initial term of appointment of the member having the degree and license of doctor of osteopathy" at the end of (4); and substituted staggered 4-year terms for term of 7 years in (5).

Chapter 470 added a licensed podiatrist.

Composite Section: Chapter 243, L. 1981, deleted one doctor board member and added two public members while Ch. 470 added a podiatrist. Since there is no conflict created by these changes, the board now has nine members.

Preamble — Board of Medical Examiners: The preamble to SB 310 (Ch. 243, L. 1981), read:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Medical Examiners and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Medical Examiners be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Medical Examiners, 79SS-2, Legislative Auditor, 1980.

Preamble — Termination of Board of Podiatry: The preamble to SB 392 (Ch. 470, L. 1981) read:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, terminates the Board of Podiatry Examiners and requires a performance evaluation by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Podiatry Examiners be terminated, and that regulation of podiatrists be transferred to the Board of Medical Examiners." See State of Montana Report to the Legislature, Sunset Review Board of

Podiatry Examiners, 79SS-8, Legislative Auditor, 1980.

Preamble — Termination of Board of Osteopathic Physicians: The preamble to SB 393 (Ch. 87, L. 1981) read:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Osteopathic Physicians and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Osteopathic Physicians be terminated and that regulation of osteopathy be transferred to the Board of Medical Examiners." See State of Montana Report to the Legislature, Sunset Review Board of Osteopathic Physicians, 79SS-6, Legislative Auditor, 1980.

Reestablishment of Board of Medical Examiners: Section 1, Ch. 243, L. 1981, provided: "The Montana state board of medical examiners is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Transfer of Funds and Records — Podiatry: Section 7, Ch. 470, L. 1981, provided: "By the effective date of this act, all funds and records of the board of podiatry examiners shall be transferred to the board of medical examiners."

Transfer of Funds and Records — Osteopaths: Section 4, Ch. 87, L. 1981, provided: "By the effective date of this act [July 1, 1981], all funds and records of the board of osteopathic physicians shall be transferred to the board of medical examiners."

Rules Remain in Effect — Podiatry: Section 8, Ch. 470, L. 1981, provided: "Existing rules of the board of podiatry examiners remain in effect unless amended or repealed by the board of medical examiners."

Rules Remain in Effect — Osteopaths: Section 5, Ch. 87, L. 1981, provided: "Current rules of the board of osteopathic physicians remain in effect unless amended or repealed by the board of medical examiners."

Continuing Licensure of Current Osteopathic Licensees: Section 3, Ch. 87, L. 1981, provided: "Persons presently licensed by the board of osteopathic physicians shall continue to be eligible for licensure by meeting current qualifications for licensure. No new qualifications for licensure may be required of persons licensed prior to the effective date of this act [July 1, 1981]."

Effective Dates: Section 7, Ch. 87, L. 1981, provided: "This act is effective July 1, 1981, and the provisions of 2-8-121 do not apply to the board of osteopathic physicians."

Section 5, Ch. 243, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

Section 11, Ch. 470, L. 1981, provided: "This act is effective July 1, 1981, and the provisions of 2-8-121 do not apply to the board of podiatry examiners."

2-15-1842. Board of dentistry. (1) There is a board of dentistry.

(2) The board consists of five dentists and one dental hygienist, and one public member, all appointed by the governor with the consent of the senate. Each licensed member shall be licensed to practice as a dentist or dental hygienist in this state, shall have actively practiced in this state for at least 5 continuous years immediately before his appointment, and shall be actively engaged in practice while serving on the board. Each member shall be a citizen of the United States and a resident of this state.

(3) Each member shall serve for a term of 5 years. The governor may remove a member only for neglect or cause.

(4) The governor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 1, Ch. 48, L. 1935; re-en. Sec. 3115.1, R.C.M. 1935; Sec. 66-901, R.C.M. 1947; amd. and redes. 82A-1602.9 by Sec. 76, Ch. 350, L. 1974; Sec. 82A-1602.9, R.C.M. 1947; amd. Sec. 1, Ch. 316, L. 1979; (4)En. Sec. 1, Ch. 316, L. 1979; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.9; amd. Sec. 1, Ch. 316, L. 1979; amd. Sec. 1, Ch. 244, L. 1981; amd. Sec. 2, Ch. 247, L. 1981; MCA 1979, 2-15-1606; redes. 2-15-1842 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 363, L. 1981; amd. Sec. 11, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 244 deleted the second and third sentences in (2) requiring appointments to be made from a list of names submitted by the Montana Dental Association and Montana Dental Hygienists' Association.

Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 363 in (2), added a public member, deleted the requirement that the Governor appoint from a list submitted by the Montana Dental Hygienists' Association and the Montana Dental Association, and made minor changes in phraseology.

Chapter 575 substituted "as a dentist or dental hygienist" for "a dental profession" in the second sentence of (2).

Preamble — Appointment From List Submitted by Private Association: The preamble to SB 312 (Ch. 244, L. 1981) read:

"WHEREAS, during the course of the Legislative Audit Committee's review of regulatory and licensing boards under the first two sunset cycles it was noted that appointments by the Governor to some boards must be made from lists submitted by private associations; and

WHEREAS, requirements tying board membership to private associations have been struck down by the courts in a number of states; and

WHEREAS, the opportunity for members of the public and private associations to submit nominees to the Governor for board appointments is in the public interest.

THEREFORE, it is the intent of this bill to delete requirements that appointments by the Governor to regulatory and licensing boards must be made from lists submitted by private associations and to provide that members of the public and private associations may submit nominees to the Governor for appointment to regulatory and licensing boards."

Preamble — Senate Confirmation: The preamble to SB 424 (Ch. 247, L. 1981) provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Preamble — Reestablishment: The preamble to SB 391 (Ch. 363, L. 1981) provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Dentistry and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation the Legislative Audit Committee recommends that the Board of Dentistry be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Dentistry, 79SS-1, Legislative Auditor, 1980.

Reestablishment — Effective Date: Section 1, Ch. 363, L. 1981, provided: "The board of dentistry is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Section 10, Ch. 363, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

Cross-References

Nominees for appointment to licensing and regulatory boards, 37-1-132.

2-15-1843. Board of pharmacists. (1) There is a board of pharmacists.

(2) The board consists of five members appointed by the governor with the consent of the senate. Three members must be licensed pharmacists, and two members must be from the general public. Each licensed member shall be a graduate of the college of pharmacy of the university of Montana or of a college or school of pharmacy accredited by the American council on pharmaceutical education. Each licensed member shall have at least 5 consecutive years of practical experience as a pharmacist immediately before his appointment. A licensed member who, during his term of office, ceases to be actively engaged in the practice of pharmacy in this state, shall be automatically disqualified from membership on the board.

(3) Members shall serve staggered 3-year terms. A member shall be removed from office by the governor on proof of malfeasance or misfeasance in office, after reasonable notice of charges against him and after a hearing.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 643, Pol. C. 1895; re-en. Sec. 1625, Rev. C. 1907; re-en. Sec. 4, Ch. 134, L. 1915; re-en. Sec. 3173, R.C.M. 1921; re-en. Sec. 3173, R.C.M. 1935; amd. Sec. 3, Ch. 175,

L. 1939; Sec. 66-1503, R.C.M. 1947; amd. and redes. 82A-1602.21 by Sec. 149, Ch. 350, L. 1974; Sec. 82A-1602.21, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.21; amd. Sec. 3, Ch. 244, L. 1981; amd. Sec. 5, Ch. 247, L. 1981; MCA 1979, 2-15-1609; redes. 2-15-1843 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 362, L. 1981; amd. Sec. 1, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 244 deleted language in (2) requiring the Governor to appoint members from a list of names submitted by the Montana pharmaceutical association.

Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 362 changed from a three-member to a five-member board; deleted the requirement that the Governor appoint from a list submitted by the Montana pharmaceutical association; required three members to be licensed pharmacists and two to be from the general public; provided for staggered 3-year terms; and made minor changes in phraseology.

Chapter 379 substituted the requirement that board members be graduates of schools accredited by the council on pharmaceutical education for the requirement of recognition and approval of the schools or membership in the association of pharmacy schools near the middle of (2); deleted "However, one member may be a registered pharmacist of 15 years' practical experience and actually engaged in the practice of pharmacy." after "before his appointment" near the middle of (5).

Preamble — Reestablishment: The preamble to SB 390 (Ch. 362, L. 1981) provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Pharmacists and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Pharmacists be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Pharmacists, 79SS-7, Legislative Auditor, 1980.

Preamble — Private Association Nominating Lists: The preamble to SB 312 (Ch. 244, L. 1981) read:

"WHEREAS, during the course of the Legislative Audit Committee's review of regulatory and licensing boards under the first two sunset cycles it was noted that appointments by the Governor to some boards must be made from lists submitted by private associations; and

WHEREAS, requirements tying board membership to private associations have been struck down by the courts in a number of states; and

WHEREAS, the opportunity for members of the public and private associations to submit nominees to the Governor for board appointments is in the public interest.

THEREFORE, it is the intent of this bill to delete requirements that appointments by the Governor to regulatory and licensing boards must be made from lists submitted by private associations and to provide that members of the public and private associations may submit nominees to the Governor for appointment to regulatory and licensing boards."

Preamble — Consent of Senate: The preamble to SB 424 (Ch. 247, L. 1981) provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Reestablishment — Effective Date: Section 1, Ch. 362, L. 1981, provided: "The board of pharmacists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Section 6, Ch. 362, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

Cross-References

Nominees for appointment to licensing and regulatory boards, 37-1-132.

2-15-1844. Board of nursing. (1) There is a board of nursing.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) four registered professional nurses; at least one such member shall have had at least 5 years in administrative, teaching, or supervisory experience in one or more schools of nursing and at least one such member must be currently engaged in the administration, supervision, or provision of direct client care. Each member shall:

(i) be a graduate of an approved school of nursing;

(ii) be a licensed registered professional nurse in this state;

(iii) have had at least 5 years' experience in nursing following graduation; and

(iv) be currently engaged in the practice of professional nursing and have practiced for at least 5 years.

(b) three practical nurses. Each shall:

(i) be a graduate of a school of practical nursing;

(ii) be a licensed practical nurse in this state;

(iii) have had at least 5 years' experience as a practical nurse; and

(iv) be currently engaged in the practice of practical nursing and have practiced for at least 5 years.

(c) two public members who are not medical practitioners, involved in the practice of nursing or employment of nursing, or administrators of Montana health care facilities.

(3) All members shall have been residents of this state for at least 1 year before appointment and be citizens of the United States.

(4) Members shall serve staggered 4-year terms, and a member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law or for incompetency or unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. 82A-1602.18 by Sec. 357, Ch. 350, L. 1974; Sec. 82A-1602.18, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.18; amd. Sec. 6, Ch. 247, L. 1981; amd. Sec. 3, Ch. 248, L. 1981; MCA 1979, 2-15-1610; redes. 2-15-1844 by Sec. 4, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 248 increased the board to nine members; reduced the number of registered professional nurses on the board to four; deleted "who constitute the board—professional nursing administration" in (2)(a); reduced from three to one the number of members who must have had administrative, teaching, or supervisory experience, and increased the length of such experience to 5 years; inserted "one or more" following "experience in" in (2)(a); inserted "and at least one such member must be currently engaged in the administration, supervision, or provision of direct client care" in (2)(a); inserted "registered professional" in (2)(a)(ii); changed "have been actively" to "be currently" in (2)(a)(iv); inserted "the practice of professional" and "and have practiced" in (2)(a)(iv); increased the period of practice to 5 years in (2)(a)(iv); deleted "immediately before appointment" in (2)(a)(iv); deleted "who constitute the board—practical nursing administration" in (2)(b); deleted "member" in (2)(b); increased the experience requirement from 3 years to 5 years in (2)(b)(iii); changed "have been actively" to "be currently" in (2)(b)(iv); inserted "and have practiced" in (2)(b)(iv); increased the period of practice to 5 years in (2)(b)(iv); deleted "immediately before appointment" in (2)(b)(iv); added subsection (2)(c); changed the term of members to staggered 4-year terms from 5-year terms in (4).

Preamble — Reestablishment: The preamble to SB 427 (Ch. 248, L. 1981) provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Nursing and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Nursing be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Nursing, 79SS-3, Legislative Auditor, 1980.

Preamble — Consent of the Senate: The preamble to SB 424 (Ch. 247, L. 1981) provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Reestablishment — Effective Date: Section 1, Ch. 248, L. 1981, read: "The board of nursing is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Section 21, Ch. 248, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

2-15-1845. Board of nursing home administrators. (1) There is a board of nursing home administrators.

(2) The board consists of five voting members appointed by the governor with the consent of the senate. No more than two members shall be nursing home administrators. One member shall represent the public at large and must be 55 years of age or older at the time of appointment. The other two members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients and may not be from the same profession or have a financial interest in a nursing home.

(3) The director of the department of health and environmental sciences or his designee and the director of the department of social and rehabilitation services or his designee are ex officio, nonvoting members of the board.

(4) Each appointed member shall serve for a term of 5 years. Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term.

(5) Appointive members may be removed by the governor only for cause.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (5)En. Sec. 2, Ch. 363, L. 1969; amd. Sec. 1, Ch. 434, L. 1973; amd. Sec. 2, Ch. 483, L. 1973; amd. Sec. 1, Ch. 153, L. 1974; Sec. 66-3102, R.C.M. 1947; amd. and redes. 82A-1602.17 by Sec. 306, Ch. 350, L. 1974; amd. Sec. 1, Ch. 95, L. 1975; Sec. 82A-1602.17, R.C.M. 1947; (6)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.17(1) thru (6); amd. Sec. 1, Ch. 163, L. 1979; amd. Sec. 4, Ch. 244, L. 1981; amd. Sec. 7, Ch. 247, L. 1981; MCA 1979, 2-15-1611; redes. 2-15-1845 by Sec. 4, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 244 deleted former (4) requiring the governor to appoint members from a list of names submitted by the board of directors of the Montana nursing home association; and made minor changes in phraseology.

Chapter 247 added "with the consent of the senate" in (2).

Preamble — Nominating Lists from Private Associations: The preamble to SB 312 (Ch. 244, L. 1981) read:

"WHEREAS, during the course of the Legislative Audit Committee's review of regulatory and licensing boards under the first two sunset cycles it was noted that appointments by the Governor to some boards must be made from lists submitted by private associations; and

WHEREAS, requirements tying board membership to private associations have been struck down by the courts in a number of states; and

WHEREAS, the opportunity for members of the public and private associations to submit nominees to the Governor for board appointments is in the public interest.

THEREFORE, it is the intent of this bill to delete requirements that appointments by the Governor to regulatory and licensing boards must be made from lists submitted by private associations and to provide that members of the public and private associations may submit nominees to the Governor for appointment to regulatory and licensing boards."

Preamble — Reestablishment: The preamble to Ch. 154, L. 1981 (SB 389), provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of

Nursing Home Administrators and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Nursing Home Administrators be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Nursing Home Administrators, 79SS-4, Legislative Auditor, 1980.

Reestablishment — Effective Date: Section 1, Ch. 154, L. 1981, provided: "The board of nursing home administrators is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Section 3, Ch. 154, L. 1981, provided: "This act is effective on passage and approval." Approved March 26, 1981.

Cross-References

Nominees for appointment to licensing and regulatory boards, 37-1-132.

2-15-1846. Board of optometrists. (1) There is a board of optometrists.

(2) The board consists of four members appointed by the governor with the consent of the senate. Three members must be registered optometrists of this state and actually engaged in the exclusive practice of optometry in this state during their terms of office. One member must be a representative of the public who is not engaged in the practice of optometry.

(3) Members shall serve staggered 4-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. 82A-1602.19 by Sec. 358, Ch. 350, L. 1974; Sec. 82A-1602.19, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.19; amd. Sec. 1, Ch. 41, L. 1979; amd. Sec. 8, Ch. 247, L. 1981; MCA 1979, 2-15-1612; redes. 2-15-1846 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 543, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 543 changed subsection (3) from "Each member shall serve for a term of 4 years" to present language.

Preamble — Reestablishment: The preamble to SB 426 (Ch. 543, L. 1981) read:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Optometrists and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Optometrists be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Optometrists, 79SS-5, Legislative Auditor, 1980.

Preamble — Consent of Senate: The preamble to Ch. 247, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Reestablishment — Effective Date: Section 1, Ch. 543, L. 1981, provided: "The board of optometrists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Section 6, Ch. 543, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

2-15-1847. Board of chiropractors. (1) There is a board of chiropractors.

(2) The board consists of four members appointed by the governor with the consent of the senate. Three members must be practicing chiropractors

of integrity and ability who are residents of this state and who have practiced chiropractic continuously in this state for at least 1 year. No two members may be graduates of the same school or college of chiropractic. One member must be a representative of the public who is not engaged in the practice of chiropractic.

(3) Each member shall serve for a term of 3 years. No member may be appointed for more than two consecutive terms. A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. I.M., Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3138, R.C.M. 1921; re-en. Sec. 3138, R.C.M. 1935; Sec. 66-501, R.C.M. 1947; amd. and redes. 82A-1602.7 by Sec. 45, Ch. 350, L. 1974; amd. Sec. 2, Ch. 579, L. 1977; Sec. 82A-1602.7, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.7; amd. Sec. 3, Ch. 155, L. 1981; amd. Sec. 9, Ch. 247, L. 1981; MCA 1979, 2-15-1613; redes. 2-15-1847 by Sec. 4, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 155 added a public member to the board; made minor changes in grammar.

Chapter 247 inserted "with the consent of the senate" in (2).

Reestablishment — Effective Date: Section 1, Ch. 155, L. 1981, provided: "The board of chiropractors is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Section 5, Ch. 155, L. 1981, provided: "This act is effective on passage and approval." Approved March 26, 1981.

Preamble — Reestablishment: The preamble to SB 394 (Ch. 155, L. 1981) provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Chiropractors and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Chiropractors be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Chiropractors, 79SS-12, Legislative Auditor, 1980.

Preamble — Consent of Senate: The preamble to Ch. 247, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

2-15-1848. Board of radiologic technologists. (1) There is a board of radiologic technologists.

(2) The board consists of seven members appointed by the governor with the consent of the senate:

(a) two members shall be radiologists licensed to practice medicine in Montana;

(b) one member shall be a person granted an unlimited permit issued by the board pursuant to 37-14-306;

(c) one member shall be a public member; and

(d) three members shall be radiologic technologists registered with the American registry of radiologic technologists (ARRT) who, with the exception of the first appointed members, are licensed radiologic technologists.

(3) Vacancies in unexpired terms shall be filled for the remainder of the term.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-1602.28 by Sec. 3, Ch. 336, L. 1975; R.C.M. 1947, 82A-1602.28(part); amd. Sec. 16, Ch. 184, L. 1979; amd. Sec. 10, Ch. 247, L. 1981; MCA 1979, 2-15-1614; redes. 2-15-1848 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 1, Ch. 296, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 296 substituted "person granted an unlimited permit issued by the board pursuant to 37-14-306" for "physician licensed to practice medicine in Montana" in (2)(b); substituted "public member" for "chiropractor licensed to practice in Montana" in (2)(c).

Preamble — Senate Confirmation: The preamble to Ch. 247, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Board Reestablished: Section 1, Ch. 292, L. 1981, provided: "The board of radiologic technologists created by 2-15-1614 is reestablished for a period of 6 years pursuant to 2-8-122." See State of Montana Report to the Legislature, Sunset Review Board of Radiologic Technologists, 79SS-10, Legislative Auditor, 1980.

2-15-1849. Board of speech pathologists and audiologists. (1) There is a board of speech pathologists and audiologists.

(2) The board consists of five members who shall:

(a) be appointed by the governor with the consent of the senate;

(b) have been residents of this state for at least 1 year immediately preceding their appointment; and

(c) have been engaged in rendering services to the public, teaching, or performing research in the field of speech pathology or audiology for at lease 5 years immediately preceding their appointment.

(3) At least two members of the board shall be speech pathologists and at least two shall be audiologists, with the remaining member to be a public member, appointed by the governor with the consent of the senate, who is a consumer of speech pathology or audiology services and who is not a licentiate of the board or of any other board within the department. All board members, except the public member, shall at all times be validly licensed in speech pathology or audiology.

(4) Appointments shall be for 3-year terms with no person eligible to serve more than two full consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82-1602.31 by Sec. 5, Ch. 543, L. 1975; R.C.M. 1947, 82A-1602.31(part); amd. Sec. 17, Ch. 184, L. 1979; amd. Sec. 5, Ch. 244, L. 1981; amd. Sec. 11, Ch. 247, L. 1981; MCA 1979, 2-15-1615; redes. 2-15-1849 by Sec. 4, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 244 deleted language in (2) requiring the governor to appoint members from a list of names submitted by the Montana speech and hearing association; and deleted former subsection (4) outlining the recommendation of names by the association.

Chapter 247 inserted "with the consent of the senate" in (2)(a); inserted "appointed by the governor with the consent of the senate" in (3).

Preamble — Nominations from Private Associations: The preamble to SB 312 (Ch. 244, L. 1981) read:

"WHEREAS, during the course of the Legislative Audit Committee's review of regulatory and licensing boards under the first two sunset cycles it was noted that appointments by the Governor to some boards must be made from lists submitted by private associations; and

WHEREAS, requirements tying board membership to private associations have been struck down by the courts in a number of states; and

WHEREAS, the opportunity for members of the public and private associations to submit nominees to the Governor for board appointments is in the public interest.

THEREFORE, it is the intent of this bill to delete requirements that appointments by the Governor to regulatory and licensing boards must be made from lists submitted by private associations and to provide that members of the public and private associations may submit nominees to the Governor for appointment to regulatory and licensing boards."

Preamble — Consent of Senate: The preamble to Ch. 247, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Reestablishment: Section 1, Ch. 326, L. 1981, provided: "The board of speech pathologists and audiologists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules." See State of Montana Report to the Legislature, Sunset Review Board of Speech Pathologists and Audiologists, 79SS-15, Legislative Auditor, 1980.

Effective Date: Section 3, Ch. 326, L. 1981, provided: "This act is effective on passage and approval." Approved April 10, 1981.

Cross-References

Nominees for appointment to licensing and regulatory boards, 37-1-132.

2-15-1850. Board of hearing aid dispensers. (1) There is a board of hearing aid dispensers.

(2) The board consists of five members appointed by the governor with the consent of the senate. The members are:

(a) one member who shall hold or be eligible for a certificate of qualification from the American board of otolaryngology;

(b) three members who have been qualified dispensers and fitters of hearing aids for at least 5 years before their appointment to the board;

(c) one public member who is not in the hearing health care field.

(3) Each member shall serve for a term of 3 years. A member may not be reappointed within 1 year after the expiration of his second consecutive full term.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 4, Ch. 204, L. 1969; Sec. 66-3004, R.C.M. 1947; amd. and redes. 82A-1602.12 by Sec. 293, Ch. 350, L. 1974; Sec. 82A-1602.12, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.12; amd. Sec. 6, Ch. 244, L. 1981; amd. Sec. 12, Ch. 247, L. 1981; MCA 1979, 2-15-1616; redes. 2-15-1850 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 244 deleted language in (2) and (3) requiring the Governor to appoint members from a list of names submitted by the Montana Academy of Otoopthalmology, Montana Speech and Hearing Association, and Montana Hearing Aid Dealers' Society; deleted former subsection (2)(d) providing for an alternate member; deleted the second sentence in (3) relating to filling a vacancy from a list; and made minor changes in phraseology.

Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 444 deleted former subsection (2)(b), which required one member of the board to be selected from a list submitted by the Montana Speech and Hearing Association which member was to hold or be eligible for a certificate of clinical competence in audiology; inserted subsection (2)(c); and substituted "categories" for "list" in former subsection (2)(b) and in the former last sentence of subsection (3).

Composite Section: Chapter 244 and Ch. 444, L. 1981, amended the same subsections in several instances creating some inconsistencies in language. There were no apparent substantive conflicts and the Code Commissioner resolved the inconsistencies as follows:

(1) Chapter 444 restructured the board makeup, therefore its deletion of a member by striking subsection (2)(b) took precedence over Ch. 244, which amended (2)(b) with the intention of merely removing an appointment list requirement;

(2) Chapter 244 deleted the alternate board member provision by striking subsection (2)(d), therefore the minor amendment to (2)(d) made by Ch. 444 in order to accommodate the addition of a public member as a category was not codified; and

(3) Chapter 244 deleted the provision for filling vacancies by striking the second sentence of (3), therefore the minor amendment to that sentence made by Ch. 444 in order to accommodate the addition of a public member was not codified.

Preamble — Nominations from Private Associations: The preamble to SB 312 (Ch. 244, L. 1981) read:

"WHEREAS, during the course of the Legislative Audit Committee's review of regulatory and licensing boards under the first two sunset cycles it was noted that appointments by the Governor to some boards must be made from lists submitted by private associations; and

WHEREAS, requirements tying board membership to private associations have been struck down by the courts in a number of states; and

WHEREAS, the opportunity for members of the public and private associations to submit nominees to the Governor for board appointments is in the public interest.

THEREFORE, it is the intent of this bill to delete requirements that appointments by the Governor to regulatory and licensing boards must be made from lists submitted by private associations and to provide that members of the public and private associations may submit nominees to the Governor for appointment to regulatory and licensing boards."

Preamble — Consent of Senate: The preamble to SB 424 (Ch. 247, L. 1981) provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Reestablishment — Effective Date: Section 1, Ch. 444, L. 1981, provided: "The board of hearing aid dispensers is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules." See State of Montana Report to the Legislature, Sunset Review Board of Hearing Aid Dispensers, 79SS-18, Legislative Auditor, 1980.

Section 13, Ch. 444, L. 1981, provided: "This act is effective on passage and approval." Approved April 20, 1981.

Cross-References

Nominees for appointment to licensing and regulatory boards, 37-1-132.

2-15-1851. Board of psychologists. (1) There is a board of psychologists.

(2) The board consists of five members appointed by the governor with the consent of the senate. One member must be a licensed psychologist in private practice, one member must be a licensed psychologist in public health, one member must be a licensed psychologist engaged in the teaching of psychology, and two members must be from the general public. A member may not succeed himself but may be reappointed after 3 years following the termination of his previous appointment.

(3) Members shall serve staggered 3-year terms.

History: En. Sec. 4, Ch. 73, L. 1971; Sec. 66-3204, R.C.M. 1947; amd. and redes. 82A-1602.27 by Sec. 314, Ch. 350, L. 1974; R.C.M. 1947, 82A-1602.27; amd. Sec. 13, Ch. 247, L. 1981; MCA 1979, 2-15-1617; redes. 2-15-1851 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 324, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 324 increased the board from three to five members; substituted the second sentence for "The governor shall appoint all members, including a member filling a vacancy for an unexpired term, from the list of licensed psychologists in this state" in (2); deleted "Each member shall be a citizen of the United States and a resident of this state" from the end of (2); substituted the language in (3) for "Each member shall serve for a term of 3 years".

Preamble — Reestablishment: The preamble to SB 397 (Ch. 324, L. 1981), provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Psychologists and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Psychologists be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Psychologists, 79SS-9, Legislative Auditor, 1980.

Preamble — Senate Confirmation: The preamble to SB 424 (Ch. 247, L. 1981), provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Reestablishment: Section 1, Ch. 324, L. 1981, provided: "The board of psychologists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Effective Date: Section 8, Ch. 324, L. 1981, provided: "This act is effective on passage and approval." Approved April 10, 1981.

2-15-1852. Board of veterinarians. (1) There is a board of veterinarians.

(2) The board consists of six members appointed by the governor with the consent of the senate, five of whom shall be licensed veterinarians and one of whom shall be a public member who is a consumer of veterinary services and who shall not be a licentiate of the board or of any other board under the department of commerce.

(3) Each veterinarian member shall be a reputable licensed veterinarian who has graduated from a college authorized by law to confer degrees and have educational standards equal to those approved by the American veterinary medical association. Each veterinarian member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least 5 years immediately before his appointment.

(4) Each member shall serve for a term of 5 years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. Sec. 1, Ch. 82, L. 1913; re-en. Sec. 3217, R.C.M. 1921; re-en. Sec. 3217, R.C.M. 1935; amd. Sec. 1, Ch. 90, L. 1955; Sec. 66-2201, R.C.M. 1947; amd. and redes. 82A-1601.24 by Sec. 204, Ch. 350, L. 1974; amd. Sec. 4, Ch. 135, L. 1975; Sec. 82A-1602.24, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.24; amd. Sec. 7, Ch. 244, L. 1981; amd. Sec. 14, Ch. 247, L. 1981; MCA 1979, 2-15-1618; amd. and redes. 2-15-1852 by Sec. 4, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 244 deleted former subsection (3) requiring the governor to appoint members from a list of names submitted by the Montana veterinary medical association.

Chapter 247 inserted "with the consent of the senate" in (2).

Preamble — Board Reestablished: The preamble to SB 395 (Ch. 96, L. 1981) read:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, terminates the Board of Veterinarians and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Veterinarians be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Veterinarians, 79SS-20, Legislative Auditor, 1980.

Preamble — Appointment from List Submitted by Private Association: The preamble to SB 312 (Ch. 244, L. 1981) read:

"WHEREAS, during the course of the Legislative Audit Committee's review of regulatory and licensing boards under the first two sunset cycles it was noted that appointments by the Governor to some boards must be made from lists submitted by private associations; and

WHEREAS, requirements tying board membership to private associations have been struck down by the courts in a number of states; and

WHEREAS, the opportunity for members of the public and private associations to submit nominees to the Governor for board appointments is in the public interest.

THEREFORE, it is the intent of this bill to delete requirements that appointments by the Governor to regulatory and licensing boards must be made from lists submitted by private associations and to provide that members of the public and private associations may submit nominees to the Governor for appointment to regulatory and licensing boards."

Preamble — Senate Confirmation: The preamble to Ch. 247, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Board Reestablished: Section 1, Ch. 96, L. 1981, provided: "The board of veterinarians is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Effective Date: Section 8, Ch. 96, L. 1981, provided: "This act is effective on passage and approval." Approved March 19, 1981.

Cross-References

Nominees for appointment to licensing and regulatory boards, 37-1-132.

2-15-1853. Board of morticians. (1) There is a board of morticians.

(2) The board consists of five members appointed by the governor with the consent of the senate. Four members shall be licensed morticians. One member shall be a representative of the public who is not engaged in the practice of mortuary science or funeral directing.

(3) Board members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 2, Ch. 41, L. 1963; Sec. 66-2702, R.C.M. 1947; amd. and redes. 82A-1602.16 by Sec. 261, Ch. 350, L. 1974; amd. Sec. 1, Ch. 233, L. 1977; Sec. 82A-1602.16, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.16; MCA 1979, 2-15-1619; redes. 2-15-1853 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 378, L. 1981.

Compiler's Comments

1981 Amendment: Chapter 378 reduced the number of board members from six to five and the members required to be morticians from five to four in (2); substituted "Board members" for "Each member" at the beginning of (3); substituted "staggered 5-year terms" for "for a term of 5 years" at the end of (3); deleted subsection (4), which provided that the public member of the board could not participate in examinations and inspections.

Preamble: The preamble to SB 398 (Ch. 378, L. 1981), provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Morticians and requires a performance evaluation of the board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Morticians be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Morticians, 79SS-19, Legislative Auditor, 1980.

Reestablishment: Section 1, Ch. 378, L. 1981, provided: "The board of morticians is reestablished for 6 years pursuant to 2-8-122, with its existing statutory authority and rules."

Effective Date: Section 10, Ch. 378, L. 1981, provided: "This act is effective on passage and approval." Approved April 15, 1981.

2-15-1854 and 2-15-1855 reserved.

2-15-1856. Board of barbers. (1) There is a board of barbers.

(2) The board consists of three barbers and one public member who is not a barber appointed by the governor with the consent of the senate. Each barber member shall be a practicing barber who has been a barber in this state for at least 5 years immediately before his appointment.

(3) Each member shall serve for a term of 3 years. The governor may remove a member for cause.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 6, Ch. 127, L. 1929; re-en. Sec. 3228.24. R.C.M. 1935; Sec. 66-406, R.C.M. 1947; amd. and. redes. 82A-1602.5 by Sec. 38, Ch. 350, L. 1974; Sec. 82A-1602.5, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.5; amd. Sec. 15, Ch. 247, L. 1981; MCA 1979, 2-15-1625; redes. 2-15-1856 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 544, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 544 added a public member who is not a barber.

Preamble — Board Reestablished: The preamble to SB 452 (Ch. 544, L. 1981) read:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Barbers and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Barbers be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Barbers, 79SS-11, Legislative Auditor, 1980.

Preamble — Senate Confirmation: The preamble to Ch. 247, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Reestablishment: Section 1, Ch. 544, L. 1981, provided: "The board of barbers is reestablished for 6 years pursuant to 2-18-122 [2-8-122] with its existing statutory authority and rules."

Effective Date: Section 13, Ch. 544, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Legislative Audit Committee Bill: Chapter 544, L. 1981 (SB 452) was introduced at the request of the Legislative Audit Committee. See State of Montana Report to the Legislature, Sunset Review Board of Barbers, 79SS-11, Legislative Auditor, 1980.

2-15-1857. Board of cosmetologists. (1) There is a board of cosmetologists.

(2) The board consists of three licensed cosmetologists and one public member who is not engaged in the practice of cosmetology or electrology [appointed by the governor] with the consent of the senate. Each licensed cosmetologist member appointed shall have actively engaged in the profession of cosmetology for at least 5 years before his appointment and have

been a resident of this state for at least 5 years immediately before his appointment. Each member shall be at least 18 years old and a graduate of a high school or its equivalent. No two members of the board may be members of or affiliated with a school of cosmetology.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 4, Ch. 104, L. 1929; re-en. Sec. 3228.4, R.C.M. 1935; amd. Sec. 4, Ch. 222, L. 1939; amd. Sec. 4, Ch. 244, L. 1961; Sec. 66-804, R.C.M. 1947; redes. 82A-1602.8 and amd. by Sec. 1, Ch. 196, L. 1973; amd. Sec. 1, Ch. 511, L. 1977; Sec. 82A-1602.8, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.8; amd. Sec. 3, Ch. 106, L. 1981; amd. Sec. 16, Ch. 247, L. 1981; MCA 1979, 2-15-1626; redes. 2-15-1857 by Sec. 4, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 106 substituted "licensed cosmetologists" for "members who may be appointed by the governor from a list of six persons recommended by the Montana state hairdressers' association" and added a public member at the beginning of (2); inserted "licensed cosmetologist" near the beginning of the second sentence of (2).

Chapter 247 inserted "with the consent of the senate" in (2).

Commissioner Clarification: The bracketed language in (2) was inserted by the Code Commissioner to clarify that the governor holds the appointing power. Deletion of that language by sec. 3, Ch. 106, L. 1981, was an apparent oversight, since appointment is referred to several times without stating the appointing authority.

Preamble — Board Reestablished: The preamble to SB 406 (Ch. 106, L. 1981) read:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Cosmetologists and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Cosmetologists be reestablished under existing statutory authority." See State of Montana Report to the Legislature, Sunset Review Board of Cosmetologists, 79SS-13, Legislative Auditor, 1980.

Preamble — Senate Confirmation: The preamble to SB 424 (Ch. 247, L. 1981) provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Reestablishment: Section 1, Ch. 106, L. 1981, provided: "The board of cosmetologists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Effective Date: Section 12, Ch. 106, L. 1981, provided: "This act is effective on passage and approval." Approved March 20, 1981.

2-15-1858. Board of physical therapy examiners. (1) There is a board of physical therapy examiners.

(2) The board consists of three members appointed by the governor with the consent of the senate for a term of 3 years.

(3) Each member must have been a resident of Montana and a practicing physical therapist for the 3 years preceding appointment to the board.

(4) Within 30 days following July 1, 1979, the governor shall make initial appointments to the board of physical therapy examiners. He shall appoint one member each to hold office for terms of 1 year, 2 years, and 3 years, respectively. At the end of each member's appointed term, a member shall be appointed for a full 3-year term.

(5) A vacancy on the board must be filled in the same manner as the original appointment. These appointments may only be made for the unexpired portions of the term.

(6) No member may be appointed for more than two consecutive terms.

(7) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.

(8) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.

(9) The board shall provide for its organizational structure by rule, which shall include a chairman, vice-chairman, and secretary-treasurer.

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 1, Ch. 491, L. 1979; amd. Sec. 8, Ch. 244, L. 1981; amd. Sec. 18, Ch. 247, L. 1981; MCA 1979, 2-15-1628; redes. 2-15-1858 by Sec. 4, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 244 deleted language in (2) requiring the governor to appoint members recommended by the Montana chapter of the American physical therapy association; deleted the language in (3) that stated an appointee need not be a member of the Montana chapter of the association; and deleted (5) and part of (6) concerning listing of nominees and filling vacancies from the list.

Chapter 247 inserted "with the consent of the senate" in (2).

Preamble — Appointment From Lists Submitted by Private Associations: The preamble to SB 312 (Ch. 244, L. 1981) read:

"WHEREAS, during the course of the Legislative Audit Committee's review of regulatory and licensing boards under the first two sunset cycles it was noted that appointments by the Governor to some boards must be made from lists submitted by private associations; and

WHEREAS, requirements tying board membership to private associations have been struck down by the courts in a number of states; and

WHEREAS, the opportunity for members of the public and private associations to submit nominees to the Governor for board appointments is in the public interest.

THEREFORE, it is the intent of this bill to delete requirements that appointments by the Governor to regulatory and licensing boards must be made from lists submitted by private associations and to provide that members of the public and private associations may submit nominees to the Governor for appointment to regulatory and licensing boards."

Preamble — Senate Confirmation: The preamble to Ch. 247, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Cross-References

Nominees for appointment to licensing and regulatory boards, 37-1-132.

2-15-1859 and 2-15-1860 reserved.

2-15-1861. Board of sanitarians. (1) There is a board of sanitarians.

(2) The board shall consist of three members appointed by the governor with the consent of the senate. Each member must be a resident of this state, and two of the members must be registered sanitarians. One member must be from the public and not a sanitarian who shall represent the interests of the public at large. Each sanitarian member shall have a minimum of 3 years of experience practicing as a sanitarian in the state of Montana.

(3) Members shall serve for 3-year terms. One term shall expire on July 1 of each year.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 69-3412, 69-3413 by Secs. 3, 4, Ch. 314, L. 1974; R.C.M. 1947, 69-3412, 69-3413(part); amd. Sec. 18, Ch. 184, L. 1979; amd. Sec. 3, Ch. 149, L. 1981; amd. Sec. 19, Ch. 247, L. 1981; MCA 1979, 2-15-1631; redes. 2-15-1861 by Sec. 4, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 149 inserted "with the consent of the senate" in (2); changed subsection (2) to provide for a member on the board who is not a sanitarian; made minor changes in phraseology.

Chapter 247 inserted "with the consent of the senate" in (2).

Preamble: The preamble to Ch. 247, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Reestablishment: Section 1, Ch. 149, L. 1981, provided: "The board of sanitarians is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Effective Date: Section 10, Ch. 149, L. 1981, provided: "This act is effective on passage and approval." Approved March 21, 1981.

2-15-1862. Board of water well contractors. (1) There is a board of water well contractors.

(2) The board shall be composed of five voting members, consisting of:

(a) one technical adviser hydrogeologist appointed by the Montana bureau of mines and geology;

(b) two licensed Montana water well contractors appointed by the governor with the concurrence of the senate;

(c) one appointed by the director of natural resources and conservation; and

(d) one appointed by the director of health and environmental sciences.

(3) The members of the board shall have been bona fide residents of this state for a period of a least 3 years prior to such appointment.

(4) The members of the board shall serve for a term of 3 years. In case of a vacancy in the office of a member of the board, an appointment shall be made to fill the same in the manner prescribed by the constitution and laws of this state.

(5) The members of the board shall, upon entering on the duties of their office, take and subscribe to the oath specified in the constitution of Montana, and such oath shall be filed in the office of the secretary of state.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (5)En. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974; Sec. 82A-1602.26, R.C.M. 1947; (6)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.26(1) thru (3); MCA 1979, 2-15-1632; redes. 2-15-1862 by Sec. 4, Ch. 274, L. 1981.

2-15-1863 through 2-15-1865 reserved.

2-15-1866. Board of public accountants. (1) There is a board of public accountants.

(2) The board consists of five members appointed by the governor. The members are:

(a) three certified public accountants certified under Title 37, chapter 50, who are certified and actively engaged in the practice of public accounting and who have held a valid certificate for at least 5 years before their appointment. The Montana society of certified public accountants shall submit to the governor annually a list of names of two candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years before his appointment. When an appointment in this category is necessary, the Montana society of public accountants shall submit to the governor a list of names of two candidates from which the appointment may be made. However, the governor is not restricted to the names on this list. If there is no licensed public accountant known by the governor to be qualified and willing to serve in this position, the governor may appoint a certified public accountant meeting the qualifications provided in (2)(a).

(c) one member of the general public who is not engaged in the practice of public accounting.

(3) Each appointment is subject to confirmation by the senate and shall be submitted for consideration at the next regular session following appointment.

(4) Each member shall serve for a term of 3 years. A member who has served two successive complete terms is not eligible for reappointment until after the lapse of 1 year. The governor may, after a hearing, remove a member for neglect of duty or other just cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. Sec. 1, Ch. 118, L. 1969; Sec. 66-1813, R.C.M. 1947; amd. and redes. 82A-1602.2 by Sec. 161, Ch. 350, L. 1974; Sec. 82A-1602.2, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.2; amd. Sec. 3, Ch. 684, L. 1979; MCA 1979, 2-15-1641, redes. 2-15-1866 by Sec. 4, Ch. 274, L. 1981.

2-15-1867. Board of realty regulation. (1) There is a board of realty regulation.

(2) The board consists of five members appointed by the governor with the consent of the senate. Three members shall be licensed real estate brokers or salesmen who are actively engaged in the real estate business as a broker or salesman in this state. Two members shall be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker or salesman. The members shall be:

(a) residents of this state; and

(b) appointed so not more than three members are from the same congressional district.

(3) Not more than three members, including the chairman, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion thereof.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 1, Ch. 497, L. 1979; MCA 1979, 2-15-1644; redes. 2-15-1867 by Sec. 4, Ch. 274, L. 1981.

2-15-1868 through 2-15-1870 reserved.

2-15-1871. Board of architects. (1) There is a board of architects.

(2) The board consists of four members appointed by the governor with the consent of the senate. The members are:

(a) two registered architects who have been in continuous practice for 3 years before their appointment;

(b) one registered architect who is on the staff of the Montana state university school of architecture; and

(c) one representative of the public who is not engaged in or directly connected with the practice of architecture.

(3) Each member must have been a resident of Montana for 4 years prior to appointment.

(4) Each member shall serve for a term of 3 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1), (2), (4)En. Sec. 1, Ch. 158, L. 1917; re-en. Sec. 3229, R.C.M. 1921; re-en. Sec. 3229, R.C.M. 1935; amd. Sec. 1, Ch. 439, L. 1973; Sec. 66-101, R.C.M. 1947; amd. and redes. 82A-1602.3 by Sec. 24, Ch. 350, L. 1974; Sec. 82A-1602.3, R.C.M. 1947; (3)En. Sec. 3, Ch. 388, L. 1979; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.3; amd. Sec. 3, Ch. 388, L. 1979; MCA 1979, 2-15-1651; redes. 2-15-1871 by Sec. 4, Ch. 274, L. 1981.

2-15-1872. Board of landscape architects. (1) There is a board of landscape architects.

(2) The board consists of five members. Members of the board shall be appointed by the governor with the consent of the senate and must be residents of this state. Three members must be landscape architects licensed under Title 37, chapter 66. Two members must be representatives of the public who are not engaged in the practice of landscape architecture.

(3) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(4) Terms are for 4 years. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled in the same manner as original appointments. No member may serve more than 8 consecutive years.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(part (1)), (3); amd. Sec. 3, Ch. 325, L. 1979; amd. Sec. 20, Ch. 247, L. 1981; MCA 1979, 2-15-1652; amd. and redes. 2-15-1872 by Secs. 3 and 4, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (3).

Preamble: The preamble to Ch. 247, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

2-15-1873. Board of professional engineers and land surveyors. (1) There is a board of professional engineers and land surveyors.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and registered in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering.

(b) two registered and practicing land surveyors who have been engaged in the practice of land surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and registered in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

(3) Each member shall be a citizen of the United States and a resident of this state. A member, after serving three consecutive terms, shall not be reappointed.

(4) Each member shall serve for a term of 4 years. The governor may remove a member for misconduct, incompetency, neglect of duty, or for any other sufficient cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. Sec. 4, Ch. 150, L. 1957; amd. Sec. 2, Ch. 282, L. 1969; Sec. 66-2327, R.C.M. 1947; amd. and redes. 82A-1602.11 by Sec. 215, Ch. 350, L. 1974; amd. Sec. 1, Ch. 366, L. 1975; Sec. 82A-1602.11, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.11; amd. Sec. 3, Ch. 408, L. 1979; amd. Sec. 21, Ch. 247, L. 1981; MCA 1979, 2-15-1653; redes. 2-15-1873 by Sec. 4, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "with the consent of the senate" in (2).

Preamble: The preamble to Ch. 247, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

2-15-1874. State electrical board. (1) There is a state electrical board.

(2) The board consists of five members appointed by the governor with the consent of the senate, who shall be residents of this state. Two members of the board shall represent the public. Two members of the board shall be licensed electricians. One member shall be a master licensed electrical contractor.

(3) The members of the board shall serve for a term of 5 years with their terms of office so arranged that one term expires on July 1 of each year.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: **(1) thru (3)En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.10(1) thru (3); amd. Sec. 3, Ch. 546, L. 1979; MCA 1979, 2-15-1654; redes. 2-15-1874 by Sec. 4, Ch. 274, L. 1981.**

2-15-1875. Board of plumbers. (1) There is a board of plumbers.

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) two master plumbers and two journeyman plumbers who are at least 18 years old, who have been residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least 5 out of the last 8 years immediately preceding their appointment;

(b) one registered professional engineer qualified in mechanical engineering;

(c) three representatives of the public who are not engaged in the business of installing or selling plumbing equipment;

(d) one appointed representative of the department of health and environmental sciences, who shall be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: **(1) thru (3)En. 82A-1602.22 by Sec. 359, Ch. 350, L. 1974; Sec. 82A-1602.22, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.22; amd. Sec. 3, Ch. 549, L. 1979; amd. Sec. 22, Ch. 247, L. 1981; MCA 1979, 2-15-1655; redes. 2-15-1875 by Sec. 4, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "with the consent of the senate" in (2).

Preamble: The preamble to Ch. 247, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

2-15-1876 through 2-15-1880 reserved.

2-15-1881. Board of horseracing. (1) There is a board of horseracing.

(2) The board consists of five members appointed by the governor with the consent of the senate, who shall be citizens, residents, and qualified electors of this state. At least one member shall be a breeder of racing horses, one member shall be a member of an independent horseracing association, one member shall be a member of a county fair board that conducts a fair featuring parimutuel betting, and two members shall have occupations unrelated to horseracing.

(3) The governor shall not appoint any member who resides in the same county as a current member. The governor shall appoint members on the basis of experience, qualifications, and a reasonable geographical balance throughout the state.

(4) Each member shall serve for a term of 3 years. A member may be removed from office by the governor only for cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (4)En. Sec. 1, Ch. 196, L. 1965; amd. Sec. 1, Ch. 457, L. 1973; Sec. 62-501, R.C.M. 1947; redes. 82A-1602.13 by Sec. 12, Ch. 350, L. 1974; Sec. 82A-1602.13, R.C.M. 1947; (5)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.13; MCA 1979, 2-15-1662; redes. 2-15-1881 by Sec. 4, Ch. 274, L. 1981.

Part 19

Insurance and Investment

2-15-1901. Office of securities commissioner. There is an office of securities commissioner, and the state auditor of Montana is hereby made and constituted ex officio securities commissioner.

History: En. Sec. 1, Ch. 251, L. 1961; R.C.M. 1947, 15-2001; amd. Sec. 8, Ch. 351, L. 1979.

2-15-1902. Insurance department. (1) There is an insurance department of this state which shall be located in or convenient to the office occupied by the state auditor.

(2) The insurance department shall be under the control and supervision of the commissioner.

(3) Funds adequate for the maintenance and operation of the insurance department shall be expressly appropriated by the legislature and shall be used solely for the purposes for which so appropriated.

History: En. Sec. 21, Ch. 286, L. 1959; R.C.M. 1947, 40-2702.

2-15-1903. Commissioner of insurance designated. The state auditor shall be ex officio the commissioner of insurance of this state.

History: En. Sec. 20, Ch. 286, L. 1959; R.C.M. 1947, 40-2701.

Part 20

Department of Justice

2-15-2001. Department of justice — head. There is a department of justice. The department head is the attorney general.

History: En. 82A-1201 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 250, L. 1973; R.C.M. 1947, 82A-1201.

2-15-2002. Division of motor vehicles. There is a division of motor vehicles within the department.

History: En. 82A-1204 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1204.

Cross-References

Division to publicize special parking permits, 49-4-306.

Motor vehicles, Title 61.

Titles and registration of motor vehicles, Title 61, ch. 3.

Drivers' licenses, Title 61, ch. 5.

Automobile insurance, Title 61, ch. 6.

Traffic regulation, Title 61, ch. 8.

Motor vehicle equipment, Title 61, ch. 9.

Records and reports of convictions, Title 61, ch. 11.

2-15-2003. Bureau of criminal investigation. There is a permanent bureau of criminal investigation within the office of the attorney general.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(1).

2-15-2004. Division of forensic science — head. (1) There is a division of forensic science in the department of justice.

(2) The division head is an administrator whose title is state medical examiner and who shall be appointed by the director of the department. He shall be a forensic pathologist qualified or certified by the American board of pathology.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429; amd. Sec. 21, Ch. 184, L. 1979.

2-15-2005. Fire marshal bureau — advisory council. (1) There is a fire marshal bureau in the department of justice which is under the supervision and control of the attorney general.

(2) The chief of the fire marshal bureau shall be appointed by the attorney general and shall serve at his pleasure. The chief of the fire marshal bureau is the state fire marshal.

(3) A person appointed state fire marshal shall have:

(a) at least 10 years of progressively responsible experience in fire protection;

(b) a 2-year associate degree in fire protection engineering from a recognized institution of higher education and 2 years' experience in fire protection; or

(c) a degree from a recognized institution of higher education in fire protection engineering or fire protection technology.

(4) The attorney general shall create a fire marshal advisory council in accordance with procedures provided in 2-15-122.

History: En. Sec. 1, Ch. 148, L. 1911; re-en. Sec. 2737, R.C.M. 1921; re-en. Sec. 2737, R.C.M. 1935; amd. Sec. 1, Ch. 229, L. 1967; amd. Sec. 33, Ch. 187, L. 1977; amd. Sec. 1, Ch. 519, L. 1977; R.C.M. 1947, 82-1201.

2-15-2006. Board of crime control — composition — allocation. (1) There is a board of crime control.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(3) The board is composed of 18 members appointed by the governor in accordance with 2-15-124 and any special requirements of Title I of the Omnibus Crime Control and Safe Streets Act, as amended. The board shall be representative of state and local law enforcement and criminal justice

agencies, including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime and shall include representatives of citizens and professional and community organizations, including organizations directly related to delinquency prevention.

History: En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. Sec. 1, Ch. 202, L. 1977; R.C.M. 1947, 82A-1207(1) thru (3); amd. Sec. 22, Ch. 184, L. 1979.

2-15-2007. Highway traffic safety program. The [highway traffic safety] program [provided for in 61-2-102] is attached [to the department of justice] for administrative purposes only as prescribed in 2-15-121. However, the program may hire its own personnel, and 2-15-121(2)(d) does not apply.

History: En. Sec. 8(2), Ch. 274, L. 1981.

Compiler's Comments

Commissioner Correction: This section was passed as subsection (2) of section 8, Ch. 274, L. 1981, and was added as an amendment. This subsection was substantive law, but the accompanying subsections are not. In codifying this section the code commissioner added the bracketed material to reflect the context in which the subsection was passed.

Transfer of Function: Section 8(1), Ch. 274, L. 1981, provided: "The functions of the department of community affairs of administering the highway traffic safety program under 61-2-102 and 61-2-103 and of assisting in delivery of emergency medical services under 50-6-104 and 50-6-203 are transferred to the department of justice."

2-15-2008 through 2-15-2010 reserved.

2-15-2011. Distribution of fire code. (1) Within 90 days after July 1, 1977, the department of justice shall compile, index, and publish all Montana statutes relating to fire protection in the form of a pamphlet to be entitled "Fire Codes of Montana". The pamphlet shall be revised and republished within 90 days after the close of any regular legislative session in which an act relating to fire protection is adopted.

(2) Upon completion, a copy of the pamphlet, as amended, shall be mailed to each fire and sheriff department within Montana without charge. The department of justice shall make copies of the pamphlet and subsequent revisions available to the public.

History: En. 82-425, 82-426 by Secs. 1, 2, Ch. 522, L. 1977; R.C.M. 1947, 82-425, 82-426.

Part 21

Department of Health and Environmental Sciences

Part Compiler's Comments

Recommendation for Transfer of Functions: Section 8, Ch. 529, L. 1981, provided: "The members of the 1981 legislature of Montana request that the governor of Montana submit recommendations to the members of the 1983 legislature concerning the transfers necessary in order to coordinate and facilitate the permitting process of those appropriate functions from the department of state lands and the board of land commissioners to the department of natural resources and conservation and from the department and board of health and environmental sciences to the department and board of natural resources and conservation."

2-15-2101. Department of health and environmental sciences — head. There is a department of health and environmental sciences. The department head is the director of health and environmental sciences appointed by the governor in accordance with 2-15-111 and in addition shall have the qualifications required in 2-15-2102.

History: En. 82A-601 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 349, L. 1974; amd. Sec. 1, Ch. 326, L. 1977; R.C.M. 1947, 82A-601.

2-15-2102. Director of health and environmental sciences — qualifications. The director of health and environmental sciences shall:

(1) have a degree of doctor of medicine;

(2) be eligible for a license by the board of medical examiners;

(3) receive a license from the board of medical examiners not later than 6 months after his appointment.

History: En. 82A-608 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 100, Ch. 349, L. 1974; amd. Sec. 2, Ch. 326, L. 1977; R.C.M. 1947, 82A-608.

2-15-2103. Division of environmental sciences — functions. There is a division of environmental sciences within the department. The department shall assign all functions performed by the department relating to air pollution control, water pollution control, radiation control, pesticides control, environmental sanitation, solid waste disposal, industrial hygiene, and related areas to the division.

History: En. 82A-604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 97, Ch. 349, L. 1974; R.C.M. 1947, 82A-604.

2-15-2104. Board of health and environmental sciences — membership — quasi-judicial. (1) There is a board of health and environmental sciences.

(2) The board consists of seven members appointed by the governor as follows:

(a) two members having professional qualifications in a human health service licensed by a board within a department of professional and occupational licenses;

(b) one member being a doctor of veterinary medicine licensed in this state who is engaged in food animal medicine; and

(c) four members who do not have the qualifications described in subsection (2)(a) or (2)(b) and who have demonstrated an active interest in the field of public health and the economic welfare of the state.

(3) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: En. 82A-605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 322, L. 1975; amd. Sec. 1, Ch. 524, L. 1977; R.C.M. 1947, 82A-605; amd. Sec. 1, Ch. 450, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "at least" at the beginning of (2)(a) and (2)(b); and substituted subsection (2)(c) for "the other members not holding such qualifications shall have demonstrated intelligent and active interest in the field of public health".

2-15-2105. Board of water and wastewater operators. (1) There is a board of water and wastewater operators.

(2) The board consists of seven members. Except as provided in subsection (2)(e) of this section, the members shall be appointed by the governor. The members are:

(a) two members who are employed water supply system or water treatment plant operators holding valid certificates. One of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator.

(b) two members who are employed wastewater treatment plant operators holding valid certificates. One of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator.

(c) one member serving on the faculty of a university or college whose major field is related to water supply systems, wastewater treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) one member who is a representative of a municipality required to employ a certified operator and who holds a position of either city manager, city engineer, director of public works, works manager, or their equivalent;

(e) the administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator.

(3) Members, except the ex officio voting member from the department of health and environmental sciences, shall serve for a term of 6 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-612 by Sec. 101, Ch. 349, L. 1974; R.C.M. 1947, 82A-612.

2-15-2106. Air pollution control advisory council. (1) There is an air pollution control advisory council.

(2) The council consists of 10 members appointed by the governor, with the consent of the senate, as follows:

(a) a representative of labor;

(b) a representative of agriculture;

(c) a representative of the manufacturing industry;

(d) a representative of the fuel industry;

(e) a practicing physician licensed in this state;

(f) a practicing veterinarian licensed in this state;

(g) a practicing registered professional chemical or environmental engineer;

(h) a meteorologist;

(i) a conservationist; and

(j) an urban planning consultant.

(3) The appointed members shall serve at the pleasure of the governor.

(4) Subsections (5) through (8) of 2-15-122 apply to the council and members.

History: En. 82A-606 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 98, Ch. 349, L. 1974; R.C.M. 1947, 82A-606.

2-15-2107. Water pollution control advisory council. (1) There is a water pollution control advisory council.

(2) The council consists of eleven members. The members are:

(a) the director of fish, wildlife, and parks;

(b) the administrator of the water resources division of the department of natural resources and conservation;

(c) the director of agriculture;

(d) eight members appointed by the governor as follows:

(i) a representative of industry concerned with the disposal of inorganic waste;

(ii) a representative of industry concerned with the disposal of organic waste;

(iii) a livestock feeder;

(iv) a representative of municipal government;

(v) a representative of an organization concerned with fishing for sport;

(vi) a representative from labor;

(vii) a supervisor of a soil and water conservation district;

(viii) a representative of an organization concerned with water recreation.

(3) The appointed council members serve at the pleasure of the governor.

(4) Subsections (5) through (8) of 2-15-122 apply to the council and members.

History: En. 82A-607 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 99, Ch. 349, L. 1974; R.C.M. 1947, 82A-607; amd. Sec. 2, Ch. 218, L. 1979.

Part 22

Department of Social and Rehabilitation Services

2-15-2201. Department of social and rehabilitation services — head. There is a department of social and rehabilitation services. The department head is a director of social and rehabilitation services appointed by the governor in accordance with 2-15-111.

History: En. 82A-1901 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1901.

2-15-2202. Board of veterans' affairs. (1) There is a board of veterans' affairs.

(2) The board consists of five members appointed by the governor with the consent of the senate. Not more than one member shall be appointed from a single county. However, a change of residence within the state after appointment does not alter a member's status. All members shall be residents of this state and shall have been honorably discharged from service in the military forces of the United States in any of its wars. A vacancy occurring on the board shall be filled by the governor, subject to the conditions of this subsection.

(3) Each member shall receive compensation and travel expenses as provided for in 37-1-133.

(4) Each member shall serve for a term of 5 years.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

History: En. 82A-1905 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 46, Ch. 121, L. 1974; R.C.M. 1947, 82A-1905; amd. Sec. 25, Ch. 247, L. 1981; amd. Sec. 4, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 247 inserted "with the consent of the senate" in (2).

Chapter 474 inserted subsection (3).

Preamble — Senate Confirmation: The preamble to Ch. 247, L. 1981, provided: "WHEREAS, the Legislative Audit Committee has completed its review of regulatory and licensing boards under the first two sunset cycles; and

WHEREAS, it was noted that appointments to many regulatory and licensing boards are not subject to Senate confirmation; and

WHEREAS, Senate confirmation provides an opportunity for input to the appointment process by members of the regulated trade, profession, or industry and by the public, which is in the public interest.

THEREFORE, it is the intent of this act to provide for Senate confirmation of members of regulatory and licensing boards not presently requiring Senate confirmation."

Board Compensation and Travel Expenses — Preamble and Title: The title and preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the compiler's comments under 37-1-133.

Preamble — Sunset Evaluation: The preamble to Ch. 323, L. 1981, provided: "WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Veterans' Affairs and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Veterans' Affairs be reestablished under existing statutory authority."

Reestablishment: Section 1, Ch. 323, L. 1981, provided: "The board of veterans' affairs is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

Effective Date: Section 3, Ch. 323, L. 1981, provided: "This act is effective on passage and approval." Approved April 10, 1981.

2-15-2203. Board of social and rehabilitation appeals — allocation — quasi-judicial. (1) There is a board of social and rehabilitation appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The board consists of three members appointed by the governor as prescribed in 2-15-124 as follows:

(a) the director of the department, who shall act as chairman of the board. The director does not have a term on the board as a board member but shall serve at the pleasure of the governor.

(b) two members of the general public.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124. For purposes of that section, a majority shall be considered as one.

History: En. 82A-1906 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1906.

2-15-2204. Developmental disabilities planning and advisory council. (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of 22 members and consists of the following:

(a) the directors of the departments of social and rehabilitation services, health and environmental sciences, and institutions or their designees;

(b) the superintendent of public instruction or a designee;

(c) one recognized private professional in each discipline of medicine, law, psychology, social work, and special education;

(d) two members of the state senate;

(e) two members of the state house of representatives;

(f) four consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities; and

(g) one member of each of the five regional councils provided for in 53-20-207, who shall also be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities.

(3) (a) Each member or his designee who serves on the council pursuant to subsection (2)(a) or (2)(b) of this section shall serve for a term concurrent with his respective term as a director or the superintendent of public instruction, as the case may be. Upon his removal from office, his or his designee's

term as a member of the council is automatically terminated and his successor in office or his successor's designee is automatically a member of the council.

(b) Each member who serves on the council pursuant to subsection (2)(d) or (2)(e) of this section shall be appointed or reappointed annually by the governor.

(c) Eight of the members serving on the council pursuant to subsection (2)(c), (2)(f), or (2)(g) of this section shall be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining six members serving on the council shall be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(4) The council is allocated to the department for administrative purposes only and, unless inconsistent with the provisions of this section and 53-20-206, the provisions of 2-15-121 apply.

History: En. 71-2406 by Sec. 5, Ch. 239, L. 1975; amd. Sec. 4, Ch. 559, L. 1977; R.C.M. 1947, 71-2406(1) thru (3), (10).

2-15-2205. Division of visual services. There is a division of visual services within the department of social and rehabilitation services. The division head is an administrator appointed by the director of the department of social and rehabilitation services in accordance with merit system and classification requirements. The division is responsible for administration of rehabilitative and other services for blind and visually handicapped persons.

History: En. Sec. 1, Ch. 523, L. 1979.

Part 23

Department of Institutions

Part Compiler's Comments

Interim Study: HJR 20 (1981) requested an interim study of the current overall functions and staffing of the department of institutions to determine the effectiveness of the delivery of institutional services by the state and required a report of the findings of the study to the legislature. The Legislative Council designated the Joint Subcommittee on Human Services to conduct the study.

2-15-2301. Department of institutions — head. There is a department of institutions. The department head is a director of institutions appointed by the governor in accordance with 2-15-111.

History: En. 82A-801 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-801.

2-15-2302. Board of pardons — composition — allocation — quasi-judicial. (1) There is a board of pardons.

(2) The board consists of three members and an auxiliary member, at least one of whom shall have particular knowledge of Indian culture and problems. Members of the board, including the auxiliary member, shall possess academic training which has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) The auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time the auxiliary member has all the rights and responsibilities of a regular board member.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(5) The board, including the auxiliary member, is designated as a quasi-judicial board for purposes of 2-15-124, except board members shall be compensated as provided by legislative appropriation.

History: En. 82A-804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 78, Ch. 120, L. 1974; amd. Sec. 1, Ch. 333, L. 1975; R.C.M. 1947, 82A-804; amd. Sec. 1, Ch. 574, L. 1979.

2-15-2303. Repealed. Sec. 3, Ch. 495, L. 1979.

History: En. 82A-806 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 80, Ch. 120, L. 1974; R.C.M. 1947, 82A-806.

2-15-2304. Repealed. Sec. 1, Ch. 286, L. 1981.

History: En. 82A-805 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 79, Ch. 120, L. 1974; R.C.M. 1947, 82A-805.

Part 24 reserved

Part 25

Department of Highways

Part Compiler's Comments

Interim Study: HJR 56 (1981) requested a comprehensive interim study of the administration and operation of the department of highways and the highway commission. The Legislative Council designated the Joint Subcommittee on Highways to conduct the study.

2-15-2501. Department of highways — head. There is a department of highways. The department head is a director of highways appointed by the governor in accordance with 2-15-111.

History: En. 82A-701 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 204, Ch. 316, L. 1974; R.C.M. 1947, 82A-701.

2-15-2502. Highway commission. (1) The highway commission consists of five members. One member shall be a bona fide resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson, Broadwater;

(b) District 2. Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park, Sweet Grass;

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin;

(d) District 4. Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan;

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter, Fallon.

(2) No two members may at the time of appointment or thereafter during their respective terms of office be residents of the same district.

(3) Not more than three members may at the time of appointment or thereafter during their respective terms be members of the same political party.

(4) No elective state official or state officer during the term of office to which he was elected or appointed and no state employee may be a member of the commission.

(5) No resolution, motion, or other decision of the commission may be adopted or passed without the favorable vote of at least three members.

(6) The commission is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(7) The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply to the commission.

History: En. Sec. 4-102, Ch. 197, L. 1965; Sec. 32-2402, R.C.M. 1947; amd. and redes. 82A-706.1 by Sec. 72, Ch. 316, L. 1974; amd. Sec. 2, Ch. 186, L. 1977; R.C.M. 1947, 82A-706.1.

Part 26

Department of Public Service Regulation

2-15-2601. Department of public service regulation — head. There is a department of public service regulation. The department head is the public service commission provided for in 2-15-2602.

History: En. 82A-1701 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1701.

2-15-2602. Public service commission — composition. (1) There is a public service commission as provided in Title 69, chapter 1, part 1.

(2) The composition, method of selection, and terms of office of members of the commission are as prescribed in Title 69, chapter 1, part 1.

History: En. 82A-1702 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1702(part).

Parts 27 through 29 reserved

Part 30

Department of Agriculture

2-15-3001. Department of agriculture — head. There is a department of agriculture. The department head is a director of agriculture appointed by the governor in accordance with 2-15-111.

History: En. 82A-301 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 141, Ch. 218, L. 1974; R.C.M. 1947, 82A-301.

2-15-3002. Montana wheat research and marketing committee — composition — allocation. (1) There is a Montana wheat research and marketing committee.

(2) The committee consists of seven members and three ex officio, nonvoting members.

(3) The governor shall appoint one member from each of the following districts:

(a) District I, consisting of Daniels, Sheridan, and Roosevelt Counties;

(b) District II, consisting of Valley, Phillips, Blaine, and Hill Counties;

(c) District III, consisting of Liberty, Toole, Glacier, and Pondera Counties;

(d) District IV, consisting of Chouteau and Teton Counties;

(e) District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell Counties;

(f) District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;

(g) District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure Counties.

(4) The ex officio members are:

(a) the director of the department of agriculture;

(b) the dean of agriculture of Montana state university;

(c) a representative of the grain trade in Montana elected by a majority of the appointed members.

(5) Each of the appointed members shall be a citizen of Montana, derive a substantial portion of his income from growing wheat or barley in this state, and be a resident of and have farming operations in the district from which appointed. No more than four of the appointed members may be of the same political party.

(6) A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, and the Montana grain growers association. Names of nominees shall be submitted within 91 days before the expiration of a committeeman's term.

(7) The appointed members shall serve staggered terms of 5 years. The ex officio representative of the grain trade shall serve at the pleasure of the committee.

(8) A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The member shall be given a copy of the written charges at least 10 days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses in his behalf.

(9) A member who ceases to reside in the state or in the district from which he was appointed or who ceases to grow wheat or barley in the state or district is disqualified from membership and his office becomes vacant. If the member refuses to recognize his disqualification, the refusal is cause for removal.

(10) The committee is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 82A-304 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 143, Ch. 218, L. 1974; amd. Sec. 8, Ch. 71, L. 1975; R.C.M. 1947, 82A-304.

2-15-3003. Board of hail insurance. (1) There is a board of hail insurance of five members consisting of the state auditor, the director of agriculture, who is secretary of the board, and three other members to be appointed by the governor from names submitted by farmer organizations having a general membership throughout the state.

(2) The governor shall designate one of the appointive members to act as chairman of the board.

(3) Whenever the term of any member expires, either by death, resignation, removal for cause, or expiration of his term of office, the governor shall appoint his successor and shall also appoint one of the board for chairman in case of a vacancy in that office.

(4) Each appointive member of the board shall be appointed for 3 years, except when such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills.

(5) All members of the board shall be subject to removal for cause by the governor.

(6) The board is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (5)En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R.C.M. 1921; amd. Sec. 1, Ch. 40, L. 1923; re-en. Sec. 350, R.C.M. 1935; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974; amd. Sec. 2, Ch. 468, L. 1977; Sec. 82-1501, R.C.M. 1947; (6)En. Sec. 1, Ch. 395, L. 1973; Sec. 82A-304.1, R.C.M. 1947; R.C.M. 1947, 82-1501(part), 82A-304.1; amd. Sec. 23, Ch. 184, L. 1979.

2-15-3004. Montana alfalfa seed committee — composition — allocation. (1) There is a Montana alfalfa seed committee composed of seven members appointed by the governor. The director of the department of agriculture or his authorized representative shall be an ex officio, nonvoting member of the committee.

(2) Each of the appointed members shall be a citizen of Montana actively engaged in the growing of alfalfa seed within the state or deriving a substantial portion of his income from handling, packing, shipping, buying, or selling alfalfa seed or acting as a broker or factor of alfalfa seed. These qualifications of members must continue during their terms of office.

(3) A list of nominees for appointment may be submitted to the governor by the Montana alfalfa seed association, the Montana seed trade association, the Montana seed growers association, and any other organization representing alfalfa seed growers or dealers. Names of nominees shall be submitted at least 91 days before the expiration of a committee member's term. The governor shall appoint members from among the persons nominated.

(4) The appointed members shall serve staggered terms of 3 years. The initial appointments shall be as follows: two members for 1-year terms, two members for 2-year terms, and three members for 3-year terms.

(5) The committee is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121.

History: En. Sec. 1, Ch. 405, L. 1981.

Compiler's Comments

Codification Instruction: Section 16, Ch. 405, L. 1981, provided: "(1) Section 1 [2-15-3004] is intended to be codified in Title 2, chapter 15, part 30.

(2) Sections 2 through 14 [80-11-301 through 80-11-313] are intended to be codified as Title 80, chapter 11, part 3."

2-15-3005. Alfalfa leaf-cutting bee advisory committee — membership — compensation. (1) There is an alfalfa leaf-cutting bee advisory committee consisting of five members appointed by the governor. The committee is attached to the department for administrative purposes only as prescribed in 2-15-121.

(2) The committee consists of:

(a) three members from the Montana alfalfa seed association;

(b) one member from the department; and

(c) one member from the cooperative extension service at Montana state university.

(3) A list of nominees for appointment to the committee may be submitted to the governor by the Montana alfalfa seed association, the department, and the cooperative extension service for the respective appointments from each entity.

(4) Appointments to the committee are for 3 years. Members may be reappointed at the discretion of the governor.

(5) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid from the earmarked revenue fund established in 80-6-1109 compensation of $25 for each day in which he is engaged in the transaction of the official business of the committee, together with expenses as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 331, L. 1981.

Compiler's Comments

Effective Date: Section 12, Ch. 331, L. 1981, provided: "This act is effective July 1, 1981."

Cross-References

Regulation of alfalfa leaf-cutting bees, Title 80, ch. 6, part 11.

Duties of committee, 80-6-1104.

Part 31

Department of Livestock

2-15-3101. Department of livestock — head. There is a department of livestock. The department head is the board of livestock provided for in 2-15-3102.

History: En. 82A-1301 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1301.

2-15-3102. Board of livestock — composition. (1) There is a board of livestock.

(2) The board consists of seven members appointed by the governor with the consent of the senate. Each member shall be a resident of the state and an active livestock producer. A member shall be appointed upon the recommendation of the related industry and shall have the following qualifications:

(a) two are cattle producers, one from each congressional district within the state;

(b) two are cattle producers at large;

(c) one is a dairy producer representing the dairy and poultry industry;

(d) one is a swine producer; and

(e) one is a sheep producer.

(3) An appointee is vested with all the powers and duties of his office before being confirmed by the senate, as are directors in 2-15-111(2).

(4) The governor shall designate the chairman of the board.

(5) A member shall serve for a term of 6 years.

(6) Members of the board shall be reimbursed and compensated as are members of quasi-judicial boards in 2-15-124(7).

History: En. 82A-1303 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 198, Ch. 310, L. 1974; amd. Sec. 1, Ch. 393, L. 1975; R.C.M. 1947, 82A-1303.

2-15-3103. Montana pork research and marketing committee. (1) The governor shall appoint a committee to be known as the Montana pork research and marketing committee, which committee shall be composed of:

(a) five members, each of whom is a citizen of Montana and each of whom derives a substantial portion of his income from producing swine in Montana;

(b) four ex officio members (who may not vote on any decisions, orders, or regulations of the committee):

(i) the commissioner of the department of agriculture;

(ii) the dean of agriculture of Montana state university;

(iii) administrator of brand enforcement, livestock department;

(iv) administrator of animal health, livestock department.

(2) One member of the committee shall be appointed from each of the following districts and shall be a resident of and shall have swine operations in the district from which appointed:

(a) District I, consisting of Deer Lodge, Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Powell, Ravalli, Sanders, Glacier, Liberty, Pondera, Teton, Toole, Broadwater, Cascade, Lewis and Clark, Meagher, Beaverhead, Gallatin, Jefferson, Madison, and Silver Bow Counties;

(b) District II, consisting of Blaine, Chouteau, Hill, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Wheatland, Big Horn, Carbon, Park, Stillwater, Sweet Grass, and Yellowstone Counties;

(c) District III, consisting of Daniels, Dawson, Garfield, McCone, Richland, Roosevelt, Sheridan, Valley, Treasure, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Wibaux, and Phillips Counties.

(3) Two members of the committee shall be appointed at large.

(4) A list of nominees for appointment to the committee may be submitted to the governor by any farm or ranch organization which has substantial numbers of its membership actively engaged in swine production. Each nominee must be from the district for which the appointment shall be made except for the at-large nominees. The names of nominees shall be submitted not less than 91 days prior to the expiration of any committee member's term.

(5) Committee members shall be appointed for a term of 5 years.

(6) Members appointed to fill unexpired terms shall be appointed for the remainder of the unexpired term.

(7) The committee is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

History: En. 82A-1306 by Sec. 3, Ch. 484, L. 1975; R.C.M. 1947, 82A-1306(part).

Part 32

Department of State Lands

Part Compiler's Comments

Recommendation for Transfer of Functions: Section 8, Ch. 529, L. 1981, provided: "The members of the 1981 legislature of Montana request that the governor of Montana submit recommendations to the members of the 1983 legislature concerning the transfers necessary in order to coordinate and facilitate the permitting process of those appropriate functions from the department of state lands and the board of land commissioners to the department of natural resources and conservation and from the department and board of health and environmental sciences to the department and board of natural resources and conservation."

2-15-3201. Department of state lands — head. There is a department of state lands. The department head is the board of land commissioners, provided for in Article X, section 4, of the constitution of this state.

History: En. 82A-1101 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 113, Ch. 428, L. 1973; R.C.M. 1947, 82A-1101.

2-15-3202. Commissioner of state lands. (1) There is a commissioner of state lands.

(2) The commissioner is the chief administrative officer of the department and, under the direction of the board of land commissioners, he is responsible for the administration of the functions vested in the department. He shall also perform those functions that are delegated to him by the board.

(3) The commissioner shall be appointed and serve as provided for directors in 2-15-111.

History: En. 82A-1104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 115, Ch. 428, L. 1973; R.C.M. 1947, 82A-1104.

Part 33

Department of Natural Resources and Conservation

Part Compiler's Comments

Recommendation for Transfer of Functions: Section 8, Ch. 529, L. 1981, provided: "The members of the 1981 legislature of Montana request that the governor of Montana submit recommendations to the members of the 1983 legislature concerning the transfers necessary in order to coordinate and facilitate the permitting process of those appropriate functions from the department of state lands and the board of land commissioners to the department of natural resources and conservation and from the department and board of health and environmental sciences to the department and board of natural resources and conservation."

2-15-3301. Department of natural resources and conservation — head. There is a department of natural resources and conservation. The department head is the director of natural resources and conservation appointed by the governor in accordance with 2-15-111.

History: En. 82A-1501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 114, Ch. 253, L. 1974; R.C.M. 1947, 82A-1501.

2-15-3302. Board of natural resources and conservation — composition — quasi-judicial. (1) There is a board of natural resources and conservation.

(2) The board is composed of seven members, appointed by the governor as prescribed in 2-15-124, informed and experienced in the subjects of natural resources and conservation.

(3) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) In addition to carrying out its functions as provided by law, the board shall act in an advisory capacity to the department in all other matters.

History: **En. 82A-1509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 384, L. 1973; amd. Sec. 117, Ch. 253, L. 1974; R.C.M. 1947, 82A-1509.**

2-15-3303. Board of oil and gas conservation — composition — allocation — quasi-judicial. (1) There is a board of oil and gas conservation.

(2) The board consists of seven members, three of whom shall be from the oil and gas industry and have had at least 3 years' experience in the production of oil and gas and two of whom shall be landowners residing in oil or gas producing counties of the state but not actively associated with the oil and gas industry, but one of the two landowners shall be one who owns the mineral rights with the surface and the other shall be one who does not own the mineral rights.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply. The board may also prescribe the duties and annual salary of four professional staff positions.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

History: **En. 82A-1508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 116, Ch. 253, L. 1974; R.C.M. 1947, 82A-1508; amd. Sec. 1, Ch. 412, L. 1979; amd. Sec. 1, Ch. 679, L. 1979.**

2-15-3304. State coordinator for rangeland resources. The department shall maintain and staff the office of state coordinator for the rangeland resources act.

History: **En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(1).**

2-15-3305. Rangeland resources committee. (1) The governor may select a committee in accordance with subsection (2) which is composed as follows:

(a) a chairman who is a rancher;
(b) a vice-chairman who is a rancher;
(c) a rancher from the eastern area of the state;
(d) a rancher from the northern area of the state;
(e) a rancher from the area of the state west of the continental divide;
(f) a rancher from the southern area of the state;
(g) a representative from each of the following agencies:
(i) Soil conservation service;
(ii) United States forest service;
(iii) Montana state university;
(iv) Farmers home administration;
(v) Montana stockgrowers association;
(vi) Office of economic development division;
(vii) School of forestry of the university of Montana;
(viii) Department of fish, wildlife, and parks;
(ix) Bureau of land management;
(x) Montana wool growers association;
(xi) Department of natural resources and conservation;
(xii) Bureau of Indian affairs;

(xiii) Montana cattlemen's association;
(xiv) Department of state lands;
(xv) Society for range management;
(xvi) United States fish and wildlife service;
(xvii) United States agricultural and stabilization service.

(2) (a) The governor shall select the members described in subsections (1)(a) through (1)(f) from a list submitted by the executive committee of the association of conservation districts and the board of directors of the Montana association of state grazing districts.

(b) The governor shall select the members described in subsection (1)(g) from a list submitted by their respective agencies and/or organizations.

(3) The committee members shall serve without compensation.

(4) All persons appointed to the committee shall serve at the pleasure of the governor.

(5) The committee is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: En. 76-305, 76-306 by Secs. 5, 6, Ch. 408, L. 1977; R.C.M. 1947, 76-305, 76-306; amd. Sec. 24, Ch. 184, L. 1979; amd. Sec. 2, Ch. 218, L. 1979.

2-15-3306. Soil survey advisory council. (1) The director of the department of natural resources and conservation shall appoint a soil survey advisory council to assist and cooperate with the department in formulation and oversight of the plan for completing the soil survey and mapping program provided for in Title 76, chapter 11, part 2. The soil survey advisory council shall consist of representatives of local, state, and federal agencies and private organizations having needs for or who could contribute expertise for the soil surveys and the mapping program.

(2) The director of the department of natural resources and conservation shall serve as chairman of the soil survey advisory council.

(3) The soil survey advisory council shall meet at least once a year.

History: En. Sec. 4, Ch. 358, L. 1979.

Part 34

Department of Fish, Wildlife, and Parks

Part Compiler's Comments

Interim Study: HJR 47 (1981) requested assignment of an interim committee to study the organization, effective utilization of personnel, budgetary contraints, and land acquisition policy of the department of fish, wildlife, and parks. The Legislative Council designated the Joint Subcommittee on Fish and Game to conduct the study.

2-15-3401. Department of fish, wildlife, and parks — head. There is a department of fish, wildlife, and parks. The department head is the director of fish, wildlife, and parks appointed by the governor in accordance with 2-15-111. The director is the secretary of the commission.

History: En. 82A-2001 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 417, L. 1977; R.C.M. 1947, 82A-2001; amd. Secs. 1, 2, Ch. 218, L. 1979.

2-15-3402. Fish and game commission — composition — qualifications — quasi-judicial. (1) There is a fish and game commission.

(2) The commission consists of five members. At least one member shall be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark Counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweet Grass Counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland Counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux Counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie Counties.

(3) Appointments shall be made without regard to political affiliation and shall be made solely for the wise management of the fish, wildlife, and state parks, and other outdoor recreational resources of this state. A person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish, and outdoor recreation and the requirements for the conservation and protection of fish, game, game birds, animals, and outdoor recreational resources.

(4) A vacancy occurring on the commission shall be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish and game commission is designated as a quasi-judicial board for purposes of 2-15-124. Notwithstanding the provisions of 2-15-124(1), the governor is not required to appoint an attorney to serve as a member of the commission.

History: En. 82A-2004 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 56, Ch. 511, L. 1973; amd. Sec. 2, Ch. 417, L. 1977; R.C.M. 1947, 82A-2004; amd. Sec. 1, Ch. 379, L. 1979.

2-15-3403. Montana outfitters' council. (1) There is a Montana outfitters' council.

(2) The council consists of seven members. Each member shall be a licensed outfitter and shall represent one of the seven fish and game administrative districts. A member shall be selected by the licensed outfitters residing in that district by election at an annual meeting of the outfitters to be held in the city where the regional headquarters is located during the month of March. A majority vote cast by written ballot of all the outfitters in attendance at the meeting shall determine the delegate from the district. At the election an alternate delegate shall also be elected by written ballot to serve if the delegate is unable to act.

(3) The members shall serve staggered 3-year terms and take office on the day they are elected.

(4) The council is allocated to the department.

(5) The council is not subject to the provisions of 2-15-122.

History: En. 82A-2005 by Sec. 57, Ch. 511, L. 1973; amd. Sec. 1, Ch. 63, L. 1974; R.C.M. 1947, 82A-2005; amd. Sec. 1, Ch. 545, L. 1981.

Compiler's Comments

1981 Amendment: Changed "the district headquarters at 1:00 p.m. on the second Friday of March" to "the city where the regional headquarters is located during the month of March" and inserted "cast by written ballot" after "vote" in the middle of (2); changed "member" to "delegate" in the last two sentences of (2); and inserted "by written ballot" after "elected" in last sentence of (2).

CHAPTER 16

PUBLIC OFFICERS

Part 1 — General Provisions

Section

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Part 1

General Provisions

2-16-101. Classification of public officers. (1) The public officers of this state are classified as follows:

(a) legislative;
(b) executive;
(c) judicial;
(d) ministerial officers and officers of the courts.

(2) This classification is not to be construed as defining the legal powers of either class.

(3) Executive officers are either:
(a) civil; or
(b) military.

History: (1), (2)En. Sec. 140, Pol. C. 1895; re-en. Sec. 49, Rev. C. 1907; re-en. Sec. 50, R.C.M. 1921; Cal. Pol. C. Sec. 220; re-en. Sec. 50, R.C.M. 1935; Sec. 59-101, R.C.M. 1947; (3)En. Sec. 330, Pol. C. 1895; re-en. Sec. 125, Rev. C. 1907; re-en. Sec. 109, R.C.M. 1921; Cal. Pol. C. Sec. 341; re-en. Sec. 109, R.C.M. 1935; Sec. 59-201, R.C.M. 1947; R.C.M. 1947, 59-101, 59-201.

2-16-102. Qualifications generally — age and citizenship. (1) Provisions respecting disqualifications for particular offices are contained in the constitution and in the provisions of the codes concerning the various offices.

(2) No person is eligible to hold civil office in this state who at the time of his election or appointment is not of the age of 18 years or older and a citizen of this state.

History: (1)En. Sec. 961, Pol. C. 1895; re-en. Sec. 343, Rev. C. 1907; re-en. Sec. 411, R.C.M. 1921; Cal. Pol. C. Sec. 842; re-en. Sec. 411, R.C.M. 1935; Sec. 59-302, R.C.M. 1947; (2)En. Sec. 960, Pol. C. 1895; re-en. Sec. 342, Rev. C. 1907; re-en. Sec. 410, R.C.M. 1921; Cal. Pol. C. Sec. 841; re-en. Sec. 410, R.C.M. 1935; amd. Sec. 14, Ch. 240, L. 1971; amd. Sec. 1, Ch. 9, L. 1973; amd. Sec. 21, Ch. 94, L. 1973; Sec. 59-301, R.C.M. 1947; R.C.M. 1947, 59-301, 59-302.

2-16-103 through 2-16-110 reserved.

2-16-111. Residence of officers. (1) The following officers must reside and keep their offices at the seat of government: the governor, secretary of state, state auditor, attorney general, superintendent of public instruction, justices of the supreme court, and clerk of the supreme court.

(2) Restrictions upon the residence of other officers are contained in the chapter or part relating to the respective officers.

History: (1)En. Sec. 970, Pol. C. 1895; re-en. Sec. 345, Rev. C. 1907; re-en. Sec. 413, R.C.M. 1921; Cal. Pol. C. Sec. 852; re-en. Sec. 413, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; Sec. 59-304, R.C.M. 1947; (2)En. Sec. 974, Pol. C. 1895; re-en. Sec. 349, Rev. C. 1907; re-en. Sec. 417, R.C.M. 1921; re-en. Sec. 417, R.C.M. 1935; Sec. 59-308, R.C.M. 1947; R.C.M. 1947, 59-304, 59-308.

2-16-112. Absence from the state. No officer mentioned in 2-16-111(1) and no officer appointed by the governor and confirmed by the senate must absent himself from the state for more than 60 consecutive days unless upon business of the state or with the consent of the legislature.

History: En. Sec. 971, Pol. C. 1895; re-en. Sec. 346, Rev. C. 1907; re-en. Sec. 414, R.C.M. 1921; Cal. Pol. C. Sec. 853; re-en. Sec. 414, R.C.M. 1935; R.C.M. 1947, 59-305.

2-16-113. Seals. (1) Each of the executive and state officers of the state must have a seal. Such seal must contain the same representations and motto as is found on the great seal and must be 2 inches in diameter, surrounded by the words "State of Montana" (giving the title of the office, "Secretary of State", etc.).

(2) An impression of the seal of executive and state officers must be filed in the office of the secretary of state.

History: En. Sec. 1131, Pol. C. 1895; re-en. Sec. 431, Rev. C. 1907; re-en. Sec. 527, R.C.M. 1921; re-en. Sec. 527, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 19-112.

2-16-114. Facsimile signatures and seals. (1) As used in this section, the following definitions apply:

(a) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money issued by this state or by any of its departments, agencies, public bodies, or other instrumentalities or by any of its political subdivisions.

(b) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(c) "Authorized officer" means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(d) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(2) Any authorized officer, after filing with the secretary of state or, in the case of officers of any city, town, county, school district, or other political subdivision, with the clerk of such subdivision, his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed, but no such manual subscription shall be required as to interest coupons attached to such security; and

(b) any instrument of payment.

(3) Upon compliance with this section by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

(4) When the seal of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

(5) Any person who with intent to defraud uses on a public security or an instrument of payment a facsimile signature or any reproduction of it of any authorized officer or any facsimile seal or any reproduction of it of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is guilty of a felony.

History: En. Secs. 1 thru 4, Ch. 260, L. 1959; R.C.M. 1947, 59-1301, 59-1302, 59-1303, 59-1304.

2-16-115. Signature of officer acting ex officio. When an officer discharges ex officio the duties of another office than that to which he is elected or appointed, his official signature and attestation, except as otherwise provided by law, must be in the name of the office the duties of which he discharges.

History: En. Sec. 1135, Pol. C. 1895; re-en. Sec. 437, Rev. C. 1907; re-en. Sec. 454, R.C.M. 1921; Cal. Pol. C. Sec. 1031; re-en. Sec. 454, R.C.M. 1935; R.C.M. 1947, 59-511.

2-16-116. Power to administer oaths. Every executive, state, and judicial officer may administer and certify oaths.

History: En. Sec. 1132, Pol. C. 1895; re-en. Sec. 434, Rev. C. 1907; re-en. Sec. 463, R.C.M. 1921; Cal. Pol. C. Sec. 1028; re-en. Sec. 463, R.C.M. 1935; R.C.M. 1947, 59-533.

2-16-117. Office hours. Unless otherwise provided by law, every officer must keep his office open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except upon Saturdays and holidays. Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires, excepting the state treasurer, who in his discretion may, in the interest of the safekeeping of funds, securities, and records under his control, close his office during the period from 12 noon to 1 p.m. every day.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol. C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; R.C.M. 1947, 59-510(1)(part).

Part 2

Accession to Office

2-16-201. Manner of election of certain officers. The mode of election of the governor, lieutenant governor, secretary of state, state auditor, attorney general, and superintendent of public instruction is prescribed by the constitution.

History: En. Sec. 340, Pol. C. 1895; re-en. Sec. 128, Rev. C. 1907; re-en. Sec. 111, R.C.M. 1921; Cal. Pol. C. Sec. 348; re-en. Sec. 111, R.C.M. 1935; amd. Sec. 22, Ch. 100, L. 1973; R.C.M. 1947, 59-203.

2-16-202. Title contested — salary withheld. (1) When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, no warrant can thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined.

(2) As soon as such proceedings are instituted, the clerk of the court in which they are pending must certify the facts to the officers whose duty it would otherwise be to draw such warrant or pay such salary.

History: En. Secs. 1040, 1041, Pol. C. 1895; re-en. Secs. 375, 376, Rev. C. 1907; re-en. Secs. 451, 452, R.C.M. 1921; Cal. Pol. C. Secs. 936, 937; re-en. Secs. 451, 452, R.C.M. 1935; R.C.M. 1947, 59-508, 59-509.

2-16-203. Manner of appointments. Every officer, the mode of whose appointment is not prescribed by the constitution or statutes, must be appointed by the governor by and with the advice and consent of the senate.

History: En. Sec. 990, Pol. C. 1895; re-en. Sec. 351, Rev. C. 1907; re-en. Sec. 419, R.C.M. 1921; Cal. Pol. C. Sec. 875; re-en. Sec. 419, R.C.M. 1935; R.C.M. 1947, 59-401.

2-16-204. Gubernatorial commissions. (1) The governor must commission:

(a) All officers elected by the people whose commissions are not otherwise provided for;

(b) All officers of the militia;

(c) All officers appointed by the governor or by the governor with consent of the senate;

(d) United States senators.

(2) The commissions of all officers commissioned by the governor must be issued in the name of the state and must be signed by the governor and attested by the secretary of state under the great seal.

History: En. Secs. 1002, 1003, Pol. C. 1895; re-en. Secs. 358, 359, Rev. C. 1907; re-en. Secs. 426, 427, R.C.M. 1921; Cal. Pol. C. Secs. 891, 892; re-en. Secs. 426, 427, R.C.M. 1935; R.C.M. 1947, 59-409, 59-410.

2-16-205. Other commissions. The commissions of all other officers, where no special provision is made by law, must be signed by the presiding officer of the body or by the person making the appointment.

History: En. Sec. 1004, Pol. C. 1895; re-en. Sec. 360, Rev. C. 1907; re-en. Sec. 428, R.C.M. 1921; Cal. Pol. C. Sec. 893; re-en. Sec. 428, R.C.M. 1935; R.C.M. 1947, 59-411.

2-16-206 through 2-16-210 reserved.

2-16-211. Oaths — form — before whom — when. (1) Members of the legislature and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, protect, and defend the constitution of the United States and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)."

(2) No other oath, declaration, or test must be required as a qualification for any office or public trust.

(3) Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

History: (1), (2)En. Sec. 3, p. 90, L. 1876; re-en. Sec. 575, 5th Div. Rev. Stat. 1879; re-en. Sec. 1067, 5th Div. Comp. Stat. 1887; amd. Sec. 1010, Pol. C. 1895; re-en. Sec. 362, Rev. C. 1907; re-en. Sec. 430, R.C.M. 1921; Cal. Pol. C. Sec. 904; re-en. Sec. 430, R.C.M. 1935; amd. Sec. 4, Ch. 7, L. 1973; amd. Sec. 23, Ch. 100, L. 1973; Sec. 59-413, R.C.M. 1947; (3)En. Sec. 1013, Pol. C. 1895; re-en. Sec. 365, Rev. C. 1907; re-en. Sec. 433, R.C.M. 1921; Cal. Pol. C. Sec. 908; re-en. Sec. 433, R.C.M. 1935; Sec. 59-416, R.C.M. 1947; R.C.M. 1947, 59-413, 59-416.

2-16-212. Filing. (1) Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed, and filed within 30 days after the officer has notice of his election or appointment or before the expiration of 15 days from the commencement of his term of office when no such notice has been given.

(2) Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(a) the oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state;

(b) the oath of all officers, elected or appointed for any county and of all officers whose duties are local or whose residence in any particular county is prescribed by law and of the clerks of the district courts, in the offices of the clerks of the respective counties.

History: (1)En. Sec. 1, Ch. 1, L. 1907; Sec. 364, Rev. C. 1907; re-en. Sec. 432, R.C.M. 1921; Cal. Pol. C. Sec. 907; re-en. Sec. 432, R.C.M. 1935; Sec. 59-415, R.C.M. 1947; (2)En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; Sec. 59-417, R.C.M. 1947; R.C.M. 1947, 59-415, 59-417(1), (2).

2-16-213. Term of office — holdover. (1) Every office of which the duration is not fixed by law is held at the pleasure of the appointing power.

(2) Every officer must continue to discharge the duties of his office, although his term has expired, until his successor has qualified.

History: En. Secs. 993, 994, Pol. C. 1895; re-en. Secs. 354, 355, Rev. C. 1907; re-en. Secs. 422, 423, R.C.M. 1921; Cal. Pol. C. Secs. 878, 879; re-en. Secs. 422, 423, R.C.M. 1935; R.C.M. 1947, 59-405, 59-406.

Part 3

Deputies

2-16-301. Appointment of deputies and subordinate officers — number. (1) All assistants, deputies, and other subordinate officers whose appointments are not otherwise provided for must be appointed by the officer or body to whom they are respectively subordinate.

(2) When the number of such deputies or subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power.

(3) The appointment of deputies, clerks, and subordinate officers, when not otherwise provided for, must be made in writing filed in the office of the appointing power or the office of its clerk.

History: (1)En. Sec. 991, Pol. C. 1895; re-en. Sec. 352, Rev. C. 1907; re-en. Sec. 420, R.C.M. 1921; Cal. Pol. C. Sec. 876; re-en. Sec. 420, R.C.M. 1935; Sec. 59-402, R.C.M. 1947; (2)En. Sec. 992, Pol. C. 1895; re-en. Sec. 353, Rev. C. 1907; re-en. Sec. 421, R.C.M. 1921; Cal. Pol. C. Sec. 877; re-en. Sec. 421, R.C.M. 1935; Sec. 59-403, R.C.M. 1947; (3)En. Sec. 1005, Pol. C. 1895; re-en. Sec. 361, Rev. C. 1907; re-en. Sec. 429, R.C.M. 1921; Cal. Pol. C. Sec. 894; re-en. Sec. 429, R.C.M. 1935; Sec. 59-412, R.C.M. 1947; R.C.M. 1947, 59-402, 59-403, 59-412.

2-16-302. Oaths of deputies and others. Deputies, clerks, and subordinate officers must within 10 days after receiving notice of their appointment take and file an oath in the manner required of their principals.

History: En. Sec. 1015, Pol. C. 1895; re-en. Sec. 367, Rev. C. 1907; re-en. Sec. 435, R.C.M. 1921; Cal. Pol. C. Sec. 910; re-en. Sec. 435, R.C.M. 1935; R.C.M. 1947, 59-418.

2-16-303. Powers. In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal.

History: En. Sec. 980, Pol. C. 1895; re-en. Sec. 350, Rev. C. 1907; re-en. Sec. 418, R.C.M. 1921; Cal. Pol. C. Sec. 865; re-en. Sec. 418, R.C.M. 1935; R.C.M. 1947, 59-404.

Part 4

Salaries

2-16-401. Salary commission — appointments — terms — meetings. (1) (a) There is created a Montana salary commission. The commission is composed of eight members, none of whom may be public officers, either elected or appointed. The commission shall be appointed in the following manner and in the following chronological order:

(i) First, the governor shall appoint one member from each of the two major political parties, equally divided between the United States congressional districts.

(ii) Next, the supreme court shall appoint one member from each of the two major political parties, equally divided between the United States congressional districts.

(iii) Next, the majority leader of the senate shall appoint one member from his political party. The minority leader of the senate shall then appoint one member from his political party not from the same United States congressional district as the member appointed by the majority leader.

(iv) Next, the presiding speaker of the house of representatives shall appoint one member from his political party. Lastly, the minority leader in the house of representatives shall appoint one member from his political party not from the same United States congressional district as the member appointed by the speaker.

(b) All appointments shall be made not later than the 60th legislative day.

(2) Commission members shall serve a term of 4 years.

(3) If a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

(4) The commission shall choose one of its members as chairman at its initial meeting, and the executive director of the legislative council or his delegate shall serve as secretary to the commission and shall record and transcribe all minutes of commission meetings and prepare all correspondence, notices, and formal recommendations as directed by the chairman.

(5) The salary commission shall hold at least two meetings before submitting a report to the legislature as provided in 2-16-402. The commission shall hold its meetings in the year prior to each first regular session of the biennium.

(6) All meetings shall be called by the chairman of the commission, and notice of the meeting dates shall be given by mail to each commission member at least 20 days before the day scheduled for the meeting.

(7) A majority of members present at any meeting is sufficient to transact any business to come before the meeting; however, a majority of all commission members is necessary to ratify the commission's recommendations to the legislature.

(8) Commission members shall be reimbursed from the appropriation to the office of the legislative council for their travel expenses incurred, as provided for in 2-18-501 through 2-18-503, as amended, and $25 per day while attending meetings of the commission.

History: (1) thru (3)En. Sec. 1, Ch. 66, L. 1973; amd. Sec. 1, Ch. 41, L. 1974; Sec. 59-1401, R.C.M. 1947; (4) thru (8)Ap. p. Sec. 2, Ch. 66, L. 1973; amd. Sec. 2, Ch. 41, L. 1974; amd. Sec. 8, Ch. 453, L. 1977; Sec. 59-1402, R.C.M. 1947; Ap. p. Sec. 4, Ch. 66, L. 1973; amd. Sec. 3, Ch. 41, L. 1974; Sec. 59-1404, R.C.M. 1947; R.C.M. 1947, 59-1401, 59-1402, 59-1404(part); amd. Sec. 25, Ch. 184, L. 1979.

2-16-402. Reports and recommendations. (1) The commission may request comprehensive reports or studies from any state agency concerning compensation of the judiciary and elective members of the legislative and executive branches of government. Any state agency from which such a report is requested shall furnish the same within a reasonable time as determined by the chairman and the head of the agency concerned. The report or study requested, in addition to such other matters as the commission may request or the agency preparing the report may determine appropriate, shall contain a review and comparison of the levels and form of compensation paid to the judiciary and elective members of the legislative and executive branches with the levels and forms of compensation paid in other states similarly situated.

(2) On or before November 15 prior to each regular session of the biennium, the commission shall submit its formal written recommendations for the level and form of compensation to be paid to the judiciary and the elective members of the legislative and executive branches to each member of the legislature, to each member of the judiciary, and each elective member of the executive branch for review and consideration. A commission member who does not concur in the proposed recommendation may submit his written objections thereto with the formal recommendations submitted by the commission.

History: (1)En. Sec. 3, Ch. 66, L. 1973; Sec. 59-1403, R.C.M. 1947; (2)En. Sec. 4, Ch. 66, L. 1973; amd. Sec. 3, Ch. 41, L. 1974; Sec. 59-1404, R.C.M. 1947; R.C.M. 1947, 59-1403, 59-1404(part).

2-16-403 and 2-16-404 reserved.

2-16-405. Salaries of certain elected state officials. The salaries paid to certain elected officials of the state of Montana for fiscal year 1982 and following years are:

	Fiscal Year 1982	Following June 30, 1982
Governor	$43,360	$47,023
Lieutenant governor	$31,077	$33,671
Chief justice of the supreme court	$44,447	$48,204
Justices of the supreme court, each	$43,360	$47,023
Attorney general	$39,555	$42,887
State auditor	$28,685	$31,071
Superintendent of public instruction	$34,120	$36,979
Public service commissioners	$31,077	$33,671
Secretary of state	$28,685	$31,071
Clerk of the supreme court	$27,870	$30,185

History: En. Sec. 1, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; amd. Sec. 1, Ch. 212, L. 1963; amd. Sec. 1, Ch. 308, L. 1967; amd. Sec. 1, Ch. 323, L. 1969; amd. Sec. 1, Ch. 314, L. 1971; amd. Sec. 4, Ch. 297, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 377, L. 1974; amd. Sec. 2, Ch. 461, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 25-501; amd. Sec. 1, Ch. 650, L. 1979; amd. Sec. 1, Ch. 605, L. 1981.

Compiler's Comments

1981 Amendment: Changed 1980 to 1982 in three places; increased in the two columns the annual salaries of the governor from $37,500 and $40,000 to $43,360 and $47,023; of the lieutenant governor from $26,800 and $28,700 to $31,077 and $33,671; of the chief justice of the supreme court from $39,000 and $41,000 to $44,447 and $48,204; of the justices of the supreme court from $38,000 and $40,000 to $43,360 and $47,023; of the attorney general from $34,500 and $36,500 to $39,555 and $42,887; of the state auditor from $24,500 and $26,500 to $28,685 and $31,071; of the superintendent of public instruction from $29,400 and $31,500 to $34,120 and $36,979; of the public service commissioners from $26,800 and $28,700 to $31,077 and $33,671; of the secretary of state from $24,500 and $26,500 to $28,685 and $31,071; and of the clerk of the supreme court from $23,875 and $25,750 to $27,870 and $30,185.

Salary Commission Bill: Chapter 605, L. 1981 (HB 580) was introduced at the request of the Montana Salary Commission. See commission report, Legislative Council, 1980.

2-16-406. Salary for all services — how paid. (1) The salary of each such officer shall be for all services required of him or which may hereafter devolve upon him by law, including all services rendered ex officio as a member of any board, commission, or committee, but shall not include actual necessary travel, lodging, and subsistence expenses incidental to his official duties.

(2) Unless otherwise provided by law, the salaries of officers must be paid out of the general fund in the state treasury monthly on the last day of the month.

History: (1)En. Sec. 2, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; Sec. 25-501.1, R.C.M. 1947; (2)En. Sec. 1133, Pol. C. 1895; amd. Sec. 1, p. 114, L. 1901; re-en. Sec. 435, Rev. C. 1907; amd. Sec. 1, Ch. 107, L. 1917; re-en. Sec. 442, R.C.M. 1921; re-en. Sec. 442, R.C.M. 1935; Sec. 25-507, R.C.M. 1947; R.C.M. 1947, 25-501.1(part), 25-507.

Part 5

Vacancy and Succession

2-16-501. Vacancies created. An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that he is seriously mentally ill;

(3) his resignation;

(4) his removal from office;

(5) his ceasing to be a resident of the state or, if the office be local, of the district, city, county, town, or township for which he was chosen or appointed or within which the duties of his office are required to be discharged;

(6) his absence from the state, without the permission of the legislature, beyond the period allowed by law;

(7) his ceasing to discharge the duty of his office for the period of 3 consecutive months, except when prevented by sickness or when absent from the state by permission of the legislature;

(8) his conviction of a felony or of any offense involving moral turpitude or a violation of his official duties;

(9) his refusal or neglect to file his official oath or bond within the time prescribed;

(10) the decision of a competent tribunal declaring void his election or appointment.

History: En. Sec. 42, p. 385, Bannack Stat.; re-en. Sec. 42, p. 468, Cod. Stat. 1871; amd. Sec. 554, 5th Div. Rev. Stat. 1879; re-en. Sec. 1046, 5th Div. Comp Stat. 1887; amd. Sec. 1101, Pol. C. 1895; re-en. Sec. 420, Rev. C. 1907; re-en. Sec. 511, R.C.M. 1921; Cal. Pol. C. Sec. 996; re-en. Sec. 511, R.C.M. 1935; R.C.M. 1947, 59-602; amd. Sec. 26, Ch. 184, L. 1979.

2-16-502. Resignations. (1) Resignations must be in writing and made as follows:

(a) by the governor and lieutenant governor, to the legislature if it is in session and, if not, then to the secretary of state;

(b) by all officers commissioned by the governor, to the governor;

(c) by senators and members of the house of representatives, if the legislature is not in session, to the secretary of state and, if it is in session, to the presiding officer of the branch to which the member belongs, who must immediately transmit the same to the secretary of state;

(d) by all county and township officers not commissioned by the governor, to the clerk of the board of commissioners of their respective counties;

(e) by all other appointed officers, to the body or officer that appointed them;

(f) in all cases not otherwise provided for, by filing the resignation in the office of the secretary of state.

(2) A resignation is effective 72 hours after its submission in the manner provided for in subsection (1) unless the resignation is withdrawn during that 72-hour period by the resigner through written notification of withdrawal made in the same manner as provided in subsection (1) for resignations.

History: En. Sec. 41, p. 468, Cod. Stat. 1871; re-en. Sec. 553, 5th Div. Rev. Stat. 1879; re-en. Sec. 1045, 5th Div. Comp. Stat. 1887; amd. Sec. 1100, Pol. C. 1895; re-en. Sec. 419, Rev. C. 1907; amd.

Sec. 1, Ch. 8, L. 1921; re-en. Sec. 510, R.C.M. 1921; Cal. Pol. C. Sec. 995; re-en. Sec. 510, R.C.M. 1935; R.C.M. 1947, 59-601; amd. Sec. 1, Ch. 68, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "secretary of state" for "governor" twice in (1)(c); added subsection (2).

2-16-503. Notice of removal. Whenever an officer is removed, declared seriously mentally ill, or convicted of a felony or offense involving moral turpitude or a violation of his official duty or whenever his election or appointment is declared void, the body, judge, or officer before whom the proceedings were had must give notice thereof to the officer authorized to fill the vacancy.

History: En. Sec. 1102, Pol. C. 1895; re-en. Sec. 421, Rev. C. 1907; re-en. Sec. 512, R.C.M. 1921; Cal. Pol. C. Sec. 997; re-en. Sec. 512, R.C.M. 1935; R.C.M. 1947, 59-603; amd. Sec. 27, Ch. 184, L. 1979.

2-16-504. Elective officers' inability to perform — filling vacancy — notice. (1) When an incumbent in the office of lieutenant governor, secretary of state, attorney general, auditor, or superintendent of public instruction is found to be permanently unable to perform the functions of his position, a vacancy exists.

(2) When a written declaration, made as hereinafter provided, is transmitted to the legislature that any such officer is unable to discharge the powers and duties of this office, the legislature may convene in the manner provided for the convening of special sessions to determine whether such disability exists or it may defer such determination to the next regular session of the legislature.

(3) If the legislature within 21 days after convening, whether in regular or special session, determines by two-thirds vote of its members that such officer is unable to discharge the powers and duties of his office, this office shall be declared to be vacant and shall be filled as provided by the constitution of Montana or laws enacted pursuant thereto.

(4) The written declaration required hereunder shall be made and transmitted by the lieutenant governor and attorney general unless one of them is the officer whose disability is in question. If the lieutenant governor is the subject of the declaration, the declaration shall be made by the governor and attorney general; if the attorney general is the subject of the declaration, the declaration shall be made by the governor and secretary of state.

History: En. Sec. 1, Ch. 343, L. 1973; R.C.M. 1947, 59-609.

2-16-505. Filling vacancies in certain elective offices. A vacancy in the office of either the secretary of state, state auditor, attorney general, clerk of the supreme court, or superintendent of public instruction must be filled by a person appointed by the governor, who holds his office until the first Monday in January next after a general election. At such election the office must be filled by election for the unexpired term.

History: En. Sec. 1106, Pol. C. 1895; re-en. Sec. 425, Rev. C. 1907; re-en. Sec. 516, R.C.M. 1921; Cal. Pol. C. Sec. 1001; re-en. Sec. 516, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 59-607.

2-16-506. Filling vacancies — recess appointments. (1) When any office becomes vacant and no mode is provided by law for filling the vacancy, the governor shall fill the vacancy by appointing a qualified person to fill the unexpired term of the person whose office became vacant.

(2) If the legislature or one house of the legislature must confirm an appointment of a person appointed by the governor to fill a vacancy, the governor may appoint the person to assume office before the legislature meets in its next regular session to consider the appointment. A person so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the legislature has not yet confirmed the appointment. If the legislature does not confirm the appointment, the governor shall make a new appointment to fill the unexpired term.

History: En. Sec. 1104, Pol. C. 1895; re-en. Sec. 423, Rev. C. 1907; re-en. Sec. 514, R.C.M. 1921; Cal. Pol. C. Sec. 999; re-en. Sec. 514, R.C.M. 1935; amd. Sec. 1, Ch. 388, L. 1973; R.C.M. 1947, 59-605.

2-16-507. Powers and duties of officer filling unexpired term. Any person elected or appointed to fill a vacancy, after filing his official oath and bond, possesses all the rights and powers and is subject to all the liabilities, duties, and obligations as if he had been elected to the office for a full term.

History: En. Sec. 1107, Pol. C. 1895; re-en. Sec. 426, Rev. C. 1907; re-en. Sec. 517, R.C.M. 1921; Cal. Pol. C. Sec. 1004; re-en. Sec. 517, R.C.M. 1935; R.C.M. 1947, 59-608.

2-16-508 through 2-16-510 reserved.

2-16-511. Vacancy in office of governor and lieutenant governor. (1) If the offices of both the governor and the lieutenant governor become vacant, the president of the senate shall become governor and shall appoint a lieutenant governor.

(2) If the president of the senate is unable to assume the office of governor, the speaker of the house shall become governor and a lieutentant governor shall be elected in accordance with the provision of 2-16-512.

History: En. Sec. 1, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.1.

2-16-512. Election by legislature if president of senate and speaker unable to assume office of governor. (1) If neither the president of the senate nor the speaker of the house of representatives is able to assume the office of governor, the legislature, meeting in joint session, shall elect a governor and a lieutenant governor.

(2) When the speaker of the house becomes governor, the legislature will meet in joint session and shall elect a lieutenant governor.

History: En. Sec. 2, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.2.

2-16-513. Succession in case of termination or incapacitation of primary successors. (1) If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate, and speaker of the house are killed or rendered unable to serve as governor, the senior member of the legislature shall act as governor.

(2) He shall call an emergency session of the legislature at a safe location within the state. The legislature meeting in joint session shall elect a governor.

(3) For the purposes of this section, the member with seniority is the member who has served in the legislature for the longest continuous period of time up to and including his current term. If two or more members of the legislature have equal seniority, the line of succession among them is from eldest to youngest in age.

History: **En. Sec. 1, Ch. 148, L. 1959; R.C.M. 1947, 82-1309; amd. Sec. 28, Ch. 184, L. 1979.**

2-16-514. Successor to serve until next general election. The successor to the governor and the lieutenant governor shall serve until the next general election and shall have all the powers, duties, and emoluments of the respective offices.

History: **En. Sec. 3, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.3.**

2-16-515. Governor and lieutenant governor incapacitated. (1) If both the governor and lieutenant governor are unable to serve as governor, the president of the senate shall become acting governor until the governor or lieutenant governor is able to resume the duties of the office.

(2) If the president of the senate is unable to become acting governor, the speaker of the house of representatives shall become acting governor.

History: **En. Sec. 4, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.4.**

2-16-516 through 2-16-520 reserved.

2-16-521. Powers of acting governor. (1) Every provision of the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward him extends to the persons performing for the time being the duties of governor.

(2) An acting governor shall have all the rights, duties, and emoluments of the office of governor while he is so acting.

History: **(1)En. Sec. 373, Pol. C. 1895; re-en. Sec. 148, Rev. C. 1907; re-en. Sec. 127, R.C.M. 1921; Cal. Pol. C. Sec. 383; re-en. Sec. 127, R.C.M. 1935; Sec. 82-1304, R.C.M. 1947; (2)En. Sec. 5, Ch. 29, L. 1973; Sec. 82-1304.5, R.C.M. 1947; R.C.M. 1947, 82-1304, 82-1304.5.**

Part 6

Montana Recall Act

2-16-601. Short title. This part shall be cited as the "Montana Recall Act".

History: **En. Sec. 1, I.M. No. 73, approved November 2, 1976; amd. Sec. 2, Ch. 364, L. 1977; R.C.M. 1947, 59-610.**

2-16-602. Definitions. As used in this part, the following definitions apply:

(1) "Public office" means a position of duty, trust, or authority created by the constitution or by the legislature or by a political subdivision through authority conferred by the constitution or the legislature that meets the following criteria:

(a) the position must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;

(b) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the constitution, the legislature, or by a political subdivision through legislative authority;

(c) the duties must be performed independently and without control of a superior power other than the law, unless the legislature has created the position and placed it under the general control of a superior office or body; and

(d) the position must have some permanency and continuity and not be only temporary or occasional.

(2) "Political subdivision" means a local government unit including but not limited to a county, city, or town established under authority of Article XI, section 1, of The Constitution of the State of Montana or a school district.

(3) "State-district" means a public service commission district, a legislative representative or senatorial district, or a judicial district.

History: En. 59-611 by Sec. 1, Ch. 364, L. 1977; R.C.M. 1947, 59-611.

2-16-603. Officers subject to recall — grounds for recall. (1) Every person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from such office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, violation of his oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 is the only basis for recall. No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct.

History: En. Sec. 2, I.M. No. 73, approved November 2, 1976; amd. Sec. 3, Ch. 364, L. 1977; R.C.M. 1947, 59-612; amd. Sec. 1, Ch. 398, L. 1979.

2-16-604 through 2-16-610 reserved.

2-16-611. Method of removal cumulative. The recall is cumulative and additional to, rather than a substitute for, other methods for removal of public officers.

History: En. Sec. 3, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 69-613.

2-16-612. Persons qualified to petition — penalty for false signatures. (1) Every person who is a qualified elector of this state may sign a petition for recall of a state officer.

(2) Every person who is a qualified elector of a district of the state from which a state-district officer is elected may sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district.

(3) Every person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision. However, if a political subdivision is divided into election districts, a

person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district.

(4) Any person signing any name other than his own to any petition or knowingly signing his name more than once for the recall or who is not at the time of the signing a qualified elector or any person who knowingly makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable.

History: En. Sec. 10, I.M. No. 73, approved November 2, 1976; amd. Sec. 7, Ch. 364, L. 1977; R.C.M. 1947, 59-620.

2-16-613. Limitations on recall petitions. (1) A recall petition may not name more than one officer to be recalled.

(2) No recall petition shall be filed against an officer until he has held office for 2 months.

(3) No recall petition may be filed against an officer for whom a recall election has been held for a period of 2 years during his term of office unless the state or political subdivision or subdivisions financing such recall election is first reimbursed for all expenses of the preceding recall election.

History: (1)En. Sec. 4, I.M. No. 73, approved November 2, 1976; amd. Sec. 4, Ch. 364, L. 1977; Sec. 59-614, R.C.M. 1947; (2), (3)En. Sec. 5, I.M. No. 73, approved November 2, 1976; Sec. 59-615, R.C.M. 1947; R.C.M. 1947, 59-614(part), 59-615.

2-16-614. Number of electors required for recall petition. Recall petitions for elected or appointed state officers shall contain the signatures of qualified electors equalling at least 10% of the number of persons registered to vote at the preceding state general election. A petition for the recall of a state-district officer must contain the signatures of qualified electors equalling at least 15% of the number of persons registered to vote in the last preceding election in that district. Recall petitions for elected or appointed county officers shall contain the signatures of qualified electors equalling at least 15% of the number of persons registered to vote at the preceding county general election. Recall petitions for elected or appointed officers of municipalities or school districts shall contain the signatures of qualified electors equalling at least 20% of the number of persons registered to vote at the preceding election for the municipality or school district.

History: En. Sec. 4, I.M. No. 73, approved November 2, 1976; amd. Sec. 4, Ch. 364, L. 1977; R.C.M. 1947, 59-614(part); amd. Sec. 1, Ch. 308, L. 1979.

2-16-615. Filing of recall petitions — mandamus for refusal. (1) Recall petitions for elected officers shall be filed with the official who is provided by law to accept the declaration of nomination or petition for nomination for such office. Recall petitions for appointed state officers shall be filed with the secretary of state and for appointed county or municipal officers shall be filed with the county election administrator. Recall petitions for appointed officers from other political subdivisions shall be filed with the county election administrator if the boundaries of the political subdivisions lie wholly within one county or otherwise with the secretary of state.

(2) If the secretary of state, county election administrator or other filing official refuses to accept and file any petition for recall with the proper

number of signatures of qualified electors, any elector may within 10 days after such refusal apply to the district court for a writ of mandamus. If it is determined that the petition is sufficient, the district court shall order the petition to be filed with a certified copy of the writ attached thereto, as of the date when it was originally offered for filing. On a showing that any filed petition is not sufficient, the court may enjoin certification, printing, or recall election.

(3) All such suits or appeals therefrom shall be advanced on the court docket and heard and decided by the court as expeditiously as possible.

(4) Any aggrieved party may file an appeal within 10 days after any adverse order or decision as provided by law.

History: En. Secs. 6, 12, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-616, 59-623; amd. Sec. 375, Ch. 571, L. 1979.

2-16-616. Form of recall petition. (1) The form of the recall petition shall be substantially as follows:

WARNING

A person who knowingly signs a name other than his own to this petition or who signs his name more than once upon a petition to recall the same officer at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years, or both.

RECALL PETITION

To the Honorable ...., Secretary of State of the State of Montana (or name and office of other filing officer): We, the undersigned qualified electors of the State of Montana (or name of appropriate state-district or political subdivision) respectfully petition that an election be held as provided by law on the question of whether ...., holding the office of ...., should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than 200 words). By his signature each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana and (name of appropriate political subdivision); and my residence and post-office address are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of the petition shall contain the heading and reasons for the proposed recall as prescribed above.

History: En. Sec. 7, I.M. No. 73, approved November 2, 1976; amd. Sec. 5, Ch. 364, L. 1977; R.C.M. 1947, 59-617.

2-16-617. Form of circulation sheets. (1) The signatures on each petition shall be placed on sheets of paper known as circulation sheets. Each circulation sheet shall be substantially 8 ½ x 14 inches or a continuous sheet may be folded so as to meet this size limitation. Such circulation sheets shall be ruled with a horizontal line 1 ½ inches from the top thereof. The space above such line shall remain blank and shall be for the purpose of binding.

(2) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than 25 circulation sheets.

(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating his reasons therefor, within 1 week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement shall be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(5) The filing officer shall serially number all approved petitions continuously from year to year.

History: En. Sec. 8, I.M. No. 73, approved November 2, 1976; amd. Sec. 6, Ch. 364, L. 1977; R.C.M. 1947, 59-618.

2-16-618. Forms not mandatory. The forms prescribed in this part are not mandatory, and if substantially followed, the petition shall be sufficient, notwithstanding clerical and merely technical errors.

History: En. Sec. 9, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-619.

2-16-619. Submission of circulation sheets — certification of signatures. (1) Signed circulation sheets or sections of a petition for recall must be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within 3 months of the date the form of the petition was approved under 2-16-617.

(2) An affidavit, in substantially the following form, shall be attached to each circulation sheet or section submitted to the county officer:

(Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, and that the signers knew the contents of the petition before signing the same.

.... (Signature)

Subscribed and sworn before me this .... day of ......, 19...

.... (Person authorized to take oaths)

Seal .... (Title or notarial information)

History: En. 59-621 by Sec. 8, Ch. 364, L. 1977; R.C.M. 1947, 59-621.

2-16-620. County clerk to verify signatures. (1) The county clerk in each county in which such a petition is signed shall compare the signatures of the electors in such county with registration signatures on file in such clerk's office and, if satisfied the signatures are genuine, certify that fact to the officer with whom the recall petition is to be filed, in substantially the following form:

To the Honorable ...., Secretary of State of the State of Montana (or name and title of other officer):

I, ..., ... (title) of .... County certify that I have compared the signatures on ...... sheets (specifying number of sheets) of the petition for recall No. ...... attached with the signatures of the registered voters as they appear upon the registration records of my office, and I believe ...... (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.

Signed: .... (Date) .... (Signature)
Seal .... (Title)

(2) Every such certificate shall be prima facie evidence of the facts stated therein and of the qualifications of the registered voters whose signatures are certified, and the secretary of state or other officer receiving the recall petition shall consider and count only such signatures as are certified, provided that the officer with whom the recall petition is filed shall consider and count any remaining signatures of the registered voters which prove to be genuine and such signatures shall be considered and counted if they are attested to in the manner and form as provided for initiative and referendum petitions.

(3) The county clerk may not retain any petition or any part of it for more than 15 days. At the expiration of such period the county clerk shall deliver the same to the person with whom the petition is required to be filed.

History: **En. Sec. 11, I.M. No. 73, approved November 2, 1976; amd. Sec. 9, Ch. 364, L. 1977; R.C.M. 1947, 59-622.**

2-16-621. Notification to officer — statement of justification. Upon filing the petition, the official with whom it is filed shall immediately give written notice to the officer named in the petition. The notice shall state that a recall petition has been filed, shall set forth the reasons contained therein, and shall notify the officer named in the recall petition that he has the right to prepare and have printed on the ballot a statement containing not more than 200 words giving reasons why he should not be recalled. No such statement of justification shall be printed on the ballot unless it is delivered to the filing official within 10 days of the date notice is given.

History: **En. Sec. 14, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-625.**

2-16-622. Resignation of officer — proclamation of election. (1) If the officer named in the petition for recall submits his resignation in writing, it shall be accepted and become effective the day it is offered. The vacancy created by such resignation shall be filled as provided by law, provided that the officer named in the petition for recall may not be appointed to fill such vacancy. If the officer named in the petition for recall refuses to resign or does not resign within 5 days after the petition is filed, a special election shall be called unless the filing is within 90 days of a general election, in which case the question shall be placed on a separate ballot at the same time as the general election.

(2) The call of a special election shall be made by the governor in the case of a state or state-district officer or by the board or officer empowered by law to call special elections for a political subdivision in the case of any officer of a political subdivision of the state.

History: En. Sec. 13, I.M. No. 73, approved November 2, 1976; amd. Sec. 10, Ch. 364, L. 1977; R.C.M. 1947, 59-624.

2-16-623 through 2-16-630 reserved.

2-16-631. Notice of recall election. The notice of a recall election shall be in substantially the following form:

NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on .... (Date) for the purpose of voting upon the recall of .... who holds the office of ....

DATED at ...., ... (Date)

History: En. Sec. 15, I.M. No. 73, approved November 2, 1976; amd. Sec. 11, Ch. 364, L. 1977; R.C.M. 1947, 59-626.

2-16-632. Conduct of special elections. A special election for recall shall be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office that is the subject of the recall petition, except as herein otherwise provided. In the case of an official holding a nonelective office, the election shall be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office of the person who has the power to appoint such official. The powers and duties conferred or imposed by law upon boards of election, registration officers, canvassing boards, and other public officials who conduct general elections are conferred and imposed upon similar officers conducting recall elections under the provisions of this section together with the penalties prescribed for the breach thereof.

History: En. Sec. 18, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-629; amd. Sec. 2, Ch. 308, L. 1979.

2-16-633. Form of ballot. (1) The ballot at such recall election shall set forth the statement contained in the recall petition stating the reasons for demanding the recall of such officer and the officer's statement of reasons why he should not be recalled. Then the question of whether the officer should be recalled shall be placed on the ballot in a form similar to the following:

☐ FOR recalling .... who holds the office of ....
☐ AGAINST recalling .... who holds the office of ....

(2) The form of the ballot shall be approved as provided in the election laws of this state.

History: En. Sec. 16, I.M. No. 73, approved November 2, 1976; amd. Sec. 12, Ch. 364, L. 1977; R.C.M. 1947, 59-627.

2-16-634. Expenses of election. Expenses of a recall election shall be paid in the same manner as the expenses for any other election. The expenditure of such funds constitutes an emergency expenditure of funds, and the political subdivision affected may fund the costs of such an election through emergency funding procedures. In the event a recall election is held for a state or state-district officer, the legislature shall appropriate funds to reimburse the counties involved for costs incurred in running the election.

History: En. Sec. 19, I.M. No. 73, approved November 2, 1976; amd. Sec. 14, Ch. 364, L. 1977; R.C.M. 1947, 59-630.

2-16-635. Officer to remain in office until results declared — filling of vacancy. The officer named in the recall petition continues in office until he resigns or the results of the recall election are officially declared. If a majority of those voting on the question vote to remove the officer, the office becomes vacant and the vacancy shall be filled as provided by law, provided that the officer recalled may in no event be appointed to fill the vacancy.

History: En. Sec. 17, I.M. No. 73, approved November 2, 1976; amd. Sec. 13, Ch. 364, L. 1977; R.C.M. 1947, 59-628.

CHAPTER 17

PROPERTY MANAGEMENT

Part 1 — Real Property and Buildings

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2-17-422. Operating history.
2-17-423. Use rules.
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2-17-431. Costs.
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Part 1

Real Property and Buildings

2-17-101. Allocation of office space. The department of administration shall periodically survey the needs of state agencies located in Helena and shall assign space in state office buildings to such agencies. No state agency shall lease, rent, or purchase property for quarters in Helena without prior approval of the department.

History: **En. Sec. 8, Ch. 271, L. 1963; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3308.**

2-17-102. Warehouses. The department of administration may maintain, rent, lease, or construct warehouses.

History: **En. Sec. 3, Ch. 197, L. 1921; re-en. Sec. 286, R.C.M. 1921; re-en. Sec. 286, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1961; amd. Sec. 59, Ch. 326, L. 1974; R.C.M. 1947, 82-1903.**

2-17-103. Permanent press room. The department of administration is required to provide for the use of representatives of the press a room on the third floor of the capitol building, adjacent to the assembly hall of the senate, to be used as a permanent press room.

History: **En. Sec. 1, Ch. 138, L. 1945; R.C.M. 1947, 43-601.**

2-17-104. Deductible insurance plan for state buildings and contents — administration. (1) A deductible plan of insurance may be established for use by the state in insuring state buildings and their contents.

(2) The administration of this section shall be placed in the department of administration with the cooperation of the insurance commissioner.

History: **En. Secs. 1, 2, Ch. 86, L. 1971; R.C.M. 1947, 78-1102, 78-1103.**

2-17-105. Insurance on state buildings — use of proceeds — building replacement. (1) Moneys received by the state as indemnification for damage to state buildings, except buildings procured by the department of highways by purchase or condemnation for right-of-way purposes, shall be deposited in the bond proceeds and insurance clearance fund.

(2) These moneys may only be:

(a) used to repair the damaged property;

(b) used to replace the damaged property, subject to the limitations in subsection (3) of this section; or

(c) transferred to the fund and account from which the premiums were paid on the policy covering the building. Moneys transferred in this manner may not be spent by the institution or agency having custody of the damaged property but shall be available for future legislative appropriation. If the moneys are not spent or committed within 2 years from the time they are received, they shall automatically revert to the fund and account from which the premiums were paid.

(3) If an insured building is totally destroyed or so badly damaged that repair is impractical, the governing board or officer responsible for the building may authorize any moneys received by the state as indemnification for property damage to be used to replace the building only if the proposed replacement is designed to be used for the same general purposes as the damaged or destroyed building. If the governing board or officer determines that the building should not be replaced, any moneys received by the state as indemnification for property damage over and above any outstanding debt on the building shall be transferred as provided in subsection (2)(c) of this section.

History: **En. Sec. 1, Ch. 110, L. 1963; amd. Sec. 23, Ch. 326, L. 1974; R.C.M. 1947, 78-1101.**

2-17-106. Highway building space assignment. (1) The department of administration shall assign space in the present highways building, upon completion of the new highways complex, to the following state departments and in the following order of priority:

(a) first to the departments of agriculture and livestock; and

(b) second to the department of natural resources and conservation.

(2) The department of administration shall assign such space with the purpose of maintaining each department's Helena-based offices, in their entirety, in a single central location. When considering assignment of space under this section, the department shall insure that those departments with first priority are provided sufficient space for future growth and that growth of first priority departments, for purposes of space assignment, takes precedence over growth of second and third priority departments.

(3) After assignment to the three named departments, any additional available space may be assigned by the department in accordance with 2-17-101.

History: **En. Sec. 1, Ch. 479, L. 1975; R.C.M. 1947, 82-3308.1.**

2-17-107 through 2-17-110 reserved.

2-17-111. Custodial care of capitol buildings and grounds. (1) The department of administration is custodian of all state property in the state capitol area.

(2) It is the duty of the department to supervise and direct the work of caring for and maintaining buildings, equipment, and grounds in the capitol area. The department shall include in the department's budget the necessary requests for appropriations for the maintenance, repair, replacement, renewal, or addition to state buildings, equipment, and grounds in the capitol area.

(3) No state agency may alter, improve, repair, or remodel a state building in the capitol area without the approval of the department.

History: En. Sec. 9, Ch. 271, L. 1963; amd. Sec. 98, Ch. 326, L. 1974; Sec. 82-3309, R.C.M. 1947; En. Sec. 10, Ch. 271, L. 1963; Sec. 82-3310, R.C.M. 1947; R.C.M. 1947, 82-3309, 82-3310.

2-17-112. Fire protection for state-owned buildings — department of administration — fire marshal. (1) The department of administration shall obtain information necessary to prepare a budget for each biennium for fire protection services for state-owned buildings that present particular firefighting problems as determined by the state fire marshal. In preparing the budget, the state may consider providing protection directly or contracting for protection with a local fire service and making payments to local governments for fire services provided to state agencies, all of which are subject to appropriation by the legislature.

(2) The state fire marshal shall review provisions for protection of state-owned buildings in connection with inspections conducted under 50-3-102.

History: En. 82-3310.1, 82-3310.2 by Secs. 1, 2, Ch. 481, L. 1977; R.C.M. 1947, 82-3310.1, 82-3310.2; amd. Sec. 12, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "each biennium" for "the next session of the legislature" in the first sentence of (1).

2-17-113 through 2-17-120 reserved.

2-17-121. Purpose. In order that the members of the public and the public officers and agencies may obtain information concerning the nature, location, and extent of the real property or interests therein acquired by the state and the manner and method of the disposal of real property or interests therein by the state, a central filing system and index is necessary. Therefore, it is the intent of the legislature to provide that the board of land commissioners shall maintain a central filing system and central index of all real property held, acquired, leased, administered, or disposed of by state agencies and that all state agencies shall provide the board of land commissioners with the information necessary to establish and maintain such a central filing system and index.

History: En. Sec. 1, Ch. 144, L. 1979.

2-17-122. Definitions. When used in 2-17-121 through 2-17-126, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Holding real property" means possessing real property by virtue of title, lease, or administering real property.

(2) "Person" means a natural person or a firm, association, partnership, cooperative, corporation, or other business entity; any agency of the state; any government subdivision; or any other entity whatever.

(3) "Real property" means land surface or subsurface and property attached or affixed to land.

(4) "State agency" means any agency, department, board, or commission of the state.

History: En. Sec. 2, Ch. 144, L. 1979.

2-17-123. Duty of state agencies to furnish information on land holdings, leases, administered lands, and acquisitions. Except as provided in 2-17-125, every state agency holding, leasing, or administering any real property shall, immediately after such real property is acquired or within 180 days after July 1, 1979, for real property now used or held, furnish to the board of land commissioners the following information, when applicable:

(1) legal description of the real property;

(2) when the real property was acquired or leased;

(3) where the abstracts, deeds, or other indicia of ownership to the real property may be found;

(4) name of the state agency holding the real property;

(5) name of the grantor or lessor;

(6) nature of interest held by the state or term of lease.

History: En. Sec. 3, Ch. 144, L. 1979.

2-17-124. Duty of state agencies to furnish information concerning land disposal. Except as provided in 2-17-125, every state agency disposing of any real property to any person shall, immediately after disposal, furnish to the board of land commissioners the following information:

(1) legal description of the real property;

(2) when the disposition of the real property was made;

(3) where the deeds or other indicia of disposal may be found;

(4) name of the state agency disposing of the real property;

(5) name of the grantee;

(6) nature of the interest disposed of by the state.

History: En. Sec. 4, Ch. 144, L. 1979.

2-17-125. Exception from reporting — treatment of highway lands. (1) A state agency is not required to file information under 2-17-123 and 2-17-124 with respect to easements, rights-of-way, and interests of a temporary nature such as licenses or permits.

(2) The department of highways is not required to file information under 2-17-123 and 2-17-124 for land held by the department in connection with highway or road construction, but the department shall file with respect to land held by the department for administrative purposes on a permanent basis.

History: En. Sec. 5, Ch. 144, L. 1979.

2-17-126. Establishment and maintenance of central filing system. The board of land commissioners shall establish and maintain a central filing system and central index of the information which is required to be filed by 2-17-123 through 2-17-125. The filing system and index shall be open to the public during regular office hours at the offices of the department of state lands.

History: En. Sec. 6, Ch. 144, L. 1979.

Part 2

Equipage and Supplies

2-17-201. Inspection of property and warehouses. The warehouses, supplies, furnishings, and property of all kinds used in and about the business of the state is subject at all times to the inspection of the department of administration and any officer or employee of any agency.

History: En. Sec. 13, Ch. 66, L. 1923; re-en. Sec. 293.13, R.C.M. 1935; amd. Sec. 78, Ch. 326, L. 1974; R.C.M. 1947, 82-1923.

2-17-202. Inventory — property to be charged to receiving agency. (1) Each person in charge of any state property must, upon request of the department of administration, furnish a sworn statement of all personal property in his possession or under his charge belonging to the state, together with an estimate of its value. He must furnish any other information in connection therewith as the department requires.

(2) Each state department, office, board, commission, and institution must be charged with all items of personal property and all other personal property placed at the disposal of any such state department, office, board, commission, and institution after June 30, 1923, and shall be credited with all worn out, used, lost, injured, or destroyed property from time to time, as may be reported to the department of administration and shall be held responsible for all items of personal property not accounted for.

History: (1)En. Sec. 1, Ch. 66, L. 1923; re-en. Sec. 293.1, R.C.M. 1935; amd. Sec. 66, Ch. 326, L. 1974; Sec. 82-1911, R.C.M. 1947; (2)En. Sec. 2, Ch. 66, L. 1923; re-en. Sec. 293.2, R.C.M. 1935; Sec. 82-1912, R.C.M. 1947; R.C.M. 1947, 82-1911, 82-1912(part).

Part 3

Communication Systems

2-17-301. Supervision of mailing, data processing, duplicating, copying, and telephone facilities. (1) The department of administration shall maintain and supervise any central mailing, messenger service, data processing, duplicating, and copying facilities for state agencies in the capitol area.

(2) The department shall maintain and supervise any central telephone switchboard for state agencies located in Helena.

(3) Cost records shall be maintained and agencies shall be billed for services received.

History: (1), (3)En. Sec. 6, Ch. 271, L. 1963; amd. Sec. 1, Ch. 298, L. 1967; amd. Sec. 3, Ch. 101, L. 1969; amd. Sec. 2, Ch. 313, L. 1971; amd. Sec. 80, Ch. 326, L. 1974; Sec. 82-3306, R.C.M. 1947; (2)En. Sec. 7, Ch. 271, L. 1963; amd. Sec. 98, Ch. 326, L. 1974; Sec. 82-3307, R.C.M. 1947; R.C.M. 1947, 82-3306, 82-3307.

2-17-302. Communication systems. (1) The department of administration shall:

(a) provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information, and other forms of communication to and from distant points.

(b) exercise general supervision over all existing communications systems for all agencies of state government;

(c) plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the department shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies.

(d) approve standards and procedures for selection, acquisition, and operation of communication equipment;

(e) insure that all communications equipment is properly maintained. The department is authorized to establish a centralized maintenance program for all state communications equipment and to contract the equipment maintenance if it is in the state's best interest. The department shall maintain cost records and bill agencies for services rendered.

(f) provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

(g) provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions the department may establish;

(h) accept federal funds granted by congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;

(i) foster the development of new and innovative communications systems and techniques for state government, including but not limited to satellite communications, and high-speed, high-density data transfer. To carry out the purposes of this section, the department may contract with qualified private organizations, foundations, or individuals if it is in the state's best interest.

(2) The department shall adopt adequate rules for the use of any communications equipment and facilities now in use or hereafter made available.

History: En. Sec. 3, Ch. 230, L. 1971; amd. Sec. 6, Ch. 215, L. 1974; amd. Sec. 86, Ch. 326, L. 1974; amd. Sec. 1, Ch. 315, L. 1975; amd. Sec. 1, Ch. 341, L. 1977; R.C.M. 1947, 82-3325.

2-17-303. Transfer of funds, equipment, facilities, and employees. (1) In order to provide for a centralized, economical, efficient, and effective maintenance program for all state communications equipment and facilities and to ensure that needless duplication of efforts in this field do not occur, the department of administration may order such transfer of appropriated funds, custody, and control of equipment and facilities and employees to the department as may be necessary to implement this program. Upon transfer, as authorized in this section, a credit account shall be established in the name of the agency from which transfer is made in the amount of funds appropriated and the market value of equipment and facilities. Such credit account shall be used to defray the costs of maintenance and repair as provided in 2-17-302(1)(e).

(2) The provisions of this section shall in no manner affect the rights or privileges of any employee transferred to the department of administration under the public employees' retirement system, the group insurance plan, or personnel system.

History: En. 82-3325.1 and 82-3325.2 by Sec. 2, 3, Ch. 315, L. 1975; R.C.M. 1947, 82-3325.1, 82-3325.2.

2-17-304. Bases of director's decisions. It is incumbent on the department of administration to base all decisions pertinent to Montana's state communication services on the factors of cost, quality of service, availability of service, and ability to maintain the system.

History: En. Sec. 7, Ch. 230, L. 1971; amd. Sec. 87, Ch. 326, L. 1974; R.C.M. 1947, 82-3329.

2-17-305. Cooperation with other government agencies not limited. This part shall not be construed so as to prohibit or limit a state agency from availing itself of connection to and cooperation with other state and federal agencies for the purpose of communications and information gathering and distributing services.

History: **En. Sec. 8, Ch. 230, L. 1971; R.C.M. 1947, 82-3330.**

2-17-306. Exemption of law enforcement communications system — exception. The provisions of this part shall not apply to the law enforcement communications system or its successor except as to the provisions dealing with the purchase, maintenance, and allocation of communication facilities. However, the department of justice shall cooperate with the department of administration to coordinate the communications networks of the state.

History: **En. Sec. 9, Ch. 230, L. 1971; amd. Sec. 88, Ch. 326, L. 1974; R.C.M. 1947, 82-3331.**

Part 4

Vehicles

2-17-401. Title to motor vehicles. The legal title to state-owned motor vehicles shall be held in the name of the state only, and all agencies holding title to motor vehicles are hereby required to transfer the same to the state. In instances where such transfer would affect the federal funding of the agency involved, the agency transferring a vehicle in accordance with this part shall be reimbursed in the amount of the fair value of the vehicle transferred necessary to assure continued participation in federal funding of the program.

History: **En. Sec. 1, Ch. 320, L. 1971; amd. Sec. 173, Ch. 316, L. 1974; amd. Sec. 1, Ch. 355, L. 1974; R.C.M. 1947, 53-514(part).**

2-17-402. Seal on motor vehicles. A motor vehicle owned by the state shall have a seal 8 inches in diameter placed upon the vehicle in accordance with the rules adopted by the department of highways, motor pool division.

History: **En. Sec. 3, Ch. 320, L. 1971; amd. Sec. 175, Ch. 316, L. 1974; amd. Sec. 3, Ch. 355, L. 1974; R.C.M. 1947, 53-516.**

2-17-403. Requisitions for purchases. All requisitions for motor vehicle purchases shall be submitted to the department of administration twice yearly at the times that it specifies. Other requisitions for automobile purchases may not be accepted by it unless the governor considers the purchase to be an emergency necessity.

History: **En. Sec. 6, Ch. 320, L. 1971; amd. Sec. 178, Ch. 316, L. 1974; amd. Sec. 6, Ch. 355, L. 1974; R.C.M. 1947, 53-519(1).**

2-17-404 through 2-17-410 reserved.

2-17-411. Helena-based motor pool — department of highways, motor pool division — exceptions. (1) The department of highways, motor pool division, is the custodian of all motor vehicles operated out of the

Helena area used primarily to carry passengers or having a cargo rating of three-quarters of a ton or less and which do not carry specialized equipment that would render them unfit for interagency use, owned or leased by the state or its agencies.

(2) This part does not apply to a motor vehicle used in the service of the governor, the attorney general, or the highway patrol.

History: (1)En. Sec. 1, Ch. 320, L. 1971; amd. Sec. 173, Ch. 316, L. 1974; amd. Sec. 1, Ch. 355, L. 1974; Sec. 53-514, R.C.M. 1947; (2)En. Sec. 7, Ch. 320, L. 1971; amd. Sec. 179, Ch. 316, L. 1974; Sec. 53-520, R.C.M. 1947; R.C.M. 1947, 53-514(part), 53-520.

2-17-412. Assignment and transfer. (1) The department of highways, motor pool division, may assign the use of state-owned or leased motor vehicles under its control to state officers or institutions or employees thereof.

(2) All motor vehicles in the custody of the department of highways, motor pool division, which are not placed under custody of the division by 2-17-411 shall be equitably transferred to the custody of those agencies that have need of vehicles as demonstrated by use records.

History: (1)En. Sec. 2, Ch. 320, L. 1971; amd. Sec. 174, Ch. 316, L. 1974; amd. Sec. 2, Ch. 355, L. 1974; Sec. 53-515, R.C.M. 1947; (2)En. 53-519.1 by Sec. 7, Ch. 355, L. 1974; Sec. 53-519.1, R.C.M. 1947; R.C.M. 1947, 53-515(part), 53-519.1.

2-17-413. Interagency rental. The department of highways, motor pool division, shall promulgate regulations for interagency rental of motor vehicles. These regulations shall govern the manner in which vehicles in the custody of one agency and for a time not required for use by that agency can be rented by another agency for its use. These regulations shall also establish the charge for vehicle rental which may include reimbursement of actual costs for administration, maintenance, service, operation, storage, and replacement costs of these vehicles.

History: En. 53-519.2 by Sec. 8, Ch. 355, L. 1974; R.C.M. 1947, 53-519.2.

2-17-414 through 2-17-420 reserved.

2-17-421. Use — state business only — compensation for driving personal vehicle. A state officer or employee may not use a state-owned or leased motor vehicle for his own personal and private use, nor may he be compensated for driving his own motor vehicle unless that motor vehicle is used on state business.

History: En. Sec. 4, Ch. 320, L. 1971; amd. Sec. 176, Ch. 316, L. 1974; amd. Sec. 4, Ch. 355, L. 1974; R.C.M. 1947, 53-517.

2-17-422. Operating history. All motor vehicle operating history records for motor vehicles under control of the department of highways, motor pool division, shall be entered in the department of highways, motor pool division. These records shall show the purchase price of the vehicle and the items of expense incurred in the operation of the vehicle, including the expenses of gas, oil, repairs, labor, storage, and service. A complete summary of the operating cost and history record of all state-owned or leased vehicles and trucks shall be prepared for each fiscal year.

History: En. Sec. 6, Ch. 320, L. 1971; amd. Sec. 178, Ch. 316, L. 1974; amd. Sec. 6, Ch. 355, L. 1974; R.C.M. 1947, 53-519(2).

2-17-423. Use rules. (1) The department of highways, motor pool division, may adopt and enforce reasonable rules governing the use and operation of motor vehicles under control of the department of highways, motor pool division.

(2) The department shall establish reasonable rules governing:

(a) employee responsibility for misuse and negligent damage of state-owned or leased vehicles;

(b) determination of when the use of privately owned vehicles on state business may be justified as in the best interest of the state;

(c) procedures for determining when a state vehicle is not available for use.

(3) The division shall adopt and formulate travel rules providing:

(a) for filing an application for travel showing necessity for trips, points to be visited, approximate time of departure and return;

(b) for filing a report upon completion of the trip, showing actual points reached, mileage traveled, and car cost record data;

(c) for recording in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service; and

(d) that a decal be affixed to the instrument panel of every state-owned vehicle with the following information contained on the decal:

"Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled passenger carrying vehicle, or of any motor-propelled passenger carrying vehicle leased by the state government, for other than official purposes shall be summarily removed from office by the head of the department of establishment concerned."

History: (1)En. Sec. 2, Ch. 320, L. 1971; amd. Sec. 174, Ch. 316, L. 1974; amd. Sec. 2, Ch. 355, L. 1974; Sec. 53-515, R.C.M. 1947; (2)En. 53-519.3 by Sec. 11, Ch. 355, L. 1974; Sec. 53-519.3, R.C.M. 1947; (3)En. Sec. 5, Ch. 320, L. 1971; amd. Sec. 177, Ch. 316, L. 1974; amd. Sec. 5, Ch. 355, L. 1974; Sec. 53-518, R.C.M. 1947; R.C.M. 1947, 53-515(part), 53-518, 53-519.3.

2-17-424 through 2-17-430 reserved.

2-17-431. Costs. The department of highways, motor pool division, may charge the individual state agencies using the motor vehicles the actual costs for administration and their maintenance, service, storage, and replacement.

History: En. Sec. 2, Ch. 320, L. 1971; amd. Sec. 174, Ch. 316, L. 1974; amd. Sec. 2, Ch. 355, L. 1974; R.C.M. 1947, 53-515(part).

2-17-432. Violation a misdemeanor — dismissal. A state officer or employee violating this part is guilty of a misdemeanor and upon conviction shall be dismissed from state employment.

History: En. Sec. 8, Ch. 320, L. 1971; amd. Sec. 180, Ch. 316, L. 1974; R.C.M. 1947, 53-521.

CHAPTER 18

STATE EMPLOYEE CLASSIFICATION, COMPENSATION, AND BENEFITS

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Part 1

General Provisions

2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Board" means the board of personnel appeals established in 2-15-1705.

(3) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

(4) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

(5) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under provisions of 2-18-703.

(6) "Department" means the department of administration created in 2-15-1001.

(7) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

(8) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

(9) "Permanent position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

(10) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position.

(11) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(12) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(13) "Program" means a combination of planned efforts to provide a service.

(14) "Seasonal position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and which is a permanent position but which is interrupted by the seasonal nature of the position.

(15) "Temporary position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months.

History: Ap.p. Sec. 1, Ch. 440, L. 1973; amd. Sec. 1, Ch. 488, L. 1977; Sec. 59-903, R.C.M. 1947; Ap.p. Sec. 1, Ch. 563, L. 1977; Sec. 59-915, R.C.M. 1947; R.C.M. 1947, 59-903(1), (2), (part(3)), (4), (5), 59-915; amd. Sec. 1, Ch. 512, L. 1979; amd. Sec. 1, Ch. 678, L. 1979; amd. Sec. 1, Ch. 421, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "and part 10" in the introductory clause; added definitions of "Board", "Class", "Class specification", and "Grade"; added "created in 2-15-1001" in definition of "Department".

Effective Date: Section 12(1), Ch. 421, L. 1981, provided: "Sections 1 through 15, excluding section 2, are effective July 11, 1981."

2-18-102. Personnel administration — general policy setting. (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and selection of capable persons for permanent, seasonal, temporary, and other types of positions and for the improvement of employee effectiveness, including training, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made thereunder and report the findings and recommendations to the governor;

(d) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(e) apply and carry out parts 1 and 2 and the policies thereunder and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that such agencies remain in compliance with policies, procedures, time tables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state. Adequate public notice shall be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date they are to take effect.

History: En. Sec. 14, Ch. 440, L. 1973; R.C.M. 1947, 59-913; amd. Sec. 2, Ch. 568, L. 1979.

2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions;

(11) investment officer and assistant investment officer of the board of investments; and

(12) four professional staff positions under the board of oil and gas conservation.

History: **En. Sec. 2, Ch. 440, L. 1973; amd. Sec. 1, Ch. 256, L. 1974; amd. Sec. 1, Ch. 391, L. 1975; amd. Sec. 2, Ch. 488, L. 1977; amd. Sec. 1, Ch. 565, L. 1977; R.C.M. 1947, 59-904; amd. Sec. 2, Ch. 365, L. 1979; amd. Sec. 2, Ch. 412, L. 1979; amd. Sec. 2, Ch. 512, L. 1979.**

Compiler's Comments

Legislative Employees — Classification: HJR 3 (1981) concerns the classification, pay, and other conditions of employment of legislative employees.

2-18-104. Exemption for personal staff — limit. (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are exempt from the application of 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013.

(2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise approved by the department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15.

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed five and must be approved by the department according to criteria approved by the department.

History: **En. Sec. 1, Ch. 440, L. 1973; amd. Sec. 1, Ch. 488, L. 1977; R.C.M. 1947, 59-903(part (3)); amd. Sec. 3, Ch. 512, L. 1979.**

2-18-105. Merit system. The merit system, established in 1940 by certain state agencies of state government as a requirement for receipt of federal funds, shall continue to operate for those agencies under the policies and procedures established by the merit system council.

History: **En. Sec. 16, Ch. 440, L. 1973; R.C.M. 1947, 59-914.**

2-18-106. No limitation on legislative authority — reversion of funds. (1) Parts 1, 2, and 3 do not limit the authority of the legislature relative to appropriations for salary and wages. The budget director shall adjust his determinations in accordance with legislative appropriations.

(2) Appropriated funds not spent at the end of the fiscal year shall revert to the fund from which appropriated.

History: **(1)En. Sec. 13, Ch. 440, L. 1973; amd. Sec. 5, Ch. 181, L. 1975; R.C.M. 1947, 59-912; amd. Sec. 2, Ch. 678, L. 1979; (2)En. Sec. 10, Ch. 421, L. 1981.**

Compiler's Comments

Codification Instruction: Section 11, Ch. 241, L. 1981, provided: "Section 10 [2-18-106(2)] is intended to be codified as an integral part of Title 2, chapter 18."

Effective Date: Section 12(1), Ch. 421, L. 1981, provided: "Sections 1 through 15, excluding section 2, are effective July 11, 1981."

Part 2

Classification

2-18-201. Development of personnel classification plan. The department shall develop a personnel classification plan for all state positions and classes of positions in state service following hearings involving affected employees and employee organizations, except those exempt in 2-18-103 and 2-18-104.

History: **En. Sec. 3, Ch. 440, L. 1973; R.C.M. 1947, 59-905; amd. Sec. 4, Ch. 512, L. 1979.**

2-18-202. Guidelines for classification. (1) In providing for the classification plan, the department shall group all positions in the state service into defined classes based on similarity of duties performed, responsibilities assumed, and complexity of work so that:

(a) similar qualifications of education, experience, knowledge, skill, and ability can be required of applicants for each position in the class;

(b) the same title can be used to identify each position in the class;

(c) similar pay may be provided under the same conditions with equity to each position within the class.

(2) A class may consist of only one position.

History: **En. Sec. 4, Ch. 440, L. 1973; R.C.M. 1947, 59-906.**

2-18-203. Review of positions — change in classification. (1) The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities. In the event adjustments are to be made to the classification specifications or criteria utilized for allocating positions in the classification specifications affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for blue-collar, teachers, and liquor store clerks classification plans, which shall remain mandatory negotiable items under the Collective Bargaining Act.

(2) Employees and employee organizations will be given the opportunity to appeal the allocation or reallocation of a position to a class. The grade assigned to a class is not an appealable subject under 2-18-1011 through 2-18-1013.

(3) The period of time for which retroactive pay for a classification appeal may be awarded under parts 1 through 3 of this chapter or under 2-18-1011 through 2-18-1013 may not extend beyond 30 days prior to the date the appeal was filed. This provision shall not affect a classification or position appeal already in process on April 26, 1977.

History: **En. Sec. 5, Ch. 440, L. 1973; amd. Sec. 1, Ch. 166, L. 1975; amd. Sec. 1, Ch. 471, L. 1977; R.C.M. 1947, 59-907; amd. Sec. 1, Ch. 577, L. 1979; amd. Sec. 2, Ch. 421, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "the allocation or reallocation of a position to a class" in (2) for "any changes in classifications or positions"; added last sentence of (2) relating to grade assigned to class is not appealable; deleted "or position" after "retroactive pay for a classification" near the beginning of (3).

Effective Date: Section 12(2), Ch. 421, L. 1981, provided: "Section 2 [2-18-203] is effective on passage and approval." Approved April 17, 1981.

2-18-204. Determination of number and classes of employees in each agency. (1) Based on documentation to be submitted by each agency, the department shall determine the classes of positions of employees of each agency or program thereof before the beginning of each fiscal year. At any time, upon request of the agency, the department may amend the classes of positions of employees in any agency or program thereof.

(2) Based on documentation to be submitted by each agency, the budget director shall determine the number of positions and employees (full-time

equivalents) of each agency or program thereof prior to preparation of the executive budget and before the beginning of each fiscal year. At any time, upon the request of the agency, the budget director may amend the number of positions or employees (full-time equivalents) in any agency or program thereof.

(3) This section does not limit legislative authority to amend the determinations of the department or the budget director.

History: En. Sec. 10, Ch. 440, L. 1973; amd. Sec. 2, Ch. 181, L. 1975; R.C.M. 1947, 59-909.

2-18-205. Department authorization for change in classes of positions. An agency may not change the classes of positions under its authority without the authorization of the department.

History: En. Sec. 12, Ch. 440, L. 1973; amd. Sec. 4, Ch. 181, L. 1975; R.C.M. 1947, 59-911; amd. Sec. 1, Ch. 468, L. 1979.

2-18-206. List of positions maintained. To facilitate state budgeting and as directed by the budget director, each agency shall maintain a list of current authorized positions, the number of positions in each class, and the salaries or wages being paid, appropriated, or proposed for each class.

History: En. Sec. 9, Ch. 440, L. 1973; amd. Sec. 1, Ch. 181, L. 1975; R.C.M. 1947, 59-908.

2-18-207. Department authorization for increase of salary or wage of class. An agency may not increase the salary or wage of any class of positions without authorization of the department.

History: En. Sec. 11, Ch. 440, L. 1973; amd. Sec. 3, Ch. 181, L. 1975; R.C.M. 1947, 59-910; amd. Sec. 2, Ch. 468, L. 1979.

Part 3

Compensation Determination

Part Compiler's Comments

Pay Schedules — Adoption — Internal References: Sections 2-18-311 through 2-18-315 establishing state pay schedules, with the exception of 2-18-311, were not amended in 1981. Section 2-18-311 was amended in sec. 5, Ch. 421, L. 1981, to delete the fiscal year 1980 pay schedule, which was the total substance of the section text, and its catchline was inadvertantly amended to become substantive law reading: "Pay schedules for fiscal year 1982 and 1983 shall be adjusted by the governor in a manner which will cost no more for pay raises than the appropriation contained in this bill." The fiscal year 1980 and 1981 pay schedules enacted in those sections, except 2-18-311, although not repealed, are obsolete because the pay schedules adopted by the governor in Executive Order No. 7-81 are the basis for state employees pay. Because of their obsolescence the code commissioner has not codified those sections.

Section 2-18-303 was amended with the assumption that new pay schedules would be legislatively enacted. When HB 840 (now Ch. 421, L. 1981) was amended to delete pay schedules, substituting the Governor's authority to set pay schedules, the internal references were not changed accordingly. The code commissioner has added the bracketed language in 2-18-303 for the convenience of the code user and to reflect the language contained in Executive Order No. 7-81 that references to pay schedule sections refer to the pay schedules adopted by the Governor (see Part Compiler's Comment "Executive Order No. 7-81" below). The Code Commissioner has similarly added bracketed language to every section containing a reference to 2-18-311 through 2-18-315.

The pay schedules adopted by the governor are located in compiler's comments under the appropriate sections.

Effective Dates of Pay Schedules: (1) Section 12(1), Ch. 421, L. 1981, provided: "Sections 1 through 15 [sic], excluding section 2, are effective July 11, 1981." The chapter contained only 12 sections. Section 5 authorized the governor to establish pay schedules; section 9 appropriated funds for employee pay.

(2) Paragraph 2, Executive Order No. 7-81, provided: "The state employee pay schedules for fiscal years 1982 and 1983 as set forth [in] this Executive Order shall be effective on the first day of the first full pay period of the fiscal year to which they apply." Those dates are July 11, 1981, and July 10, 1982.

Executive Order No. 7-81: Executive Order No. 7-81, signed by Ted Schwinden, Governor, on May 7, 1981, provided in part:
"Executive Order Establishing State Employee Pay Schedules for Fiscal Years 1982 and 1983.

I, TED SCHWINDEN, in accordance with the authority vested in me as Governor by the laws and Constitution of the State of Montana, and specifically by Chapter 421, Laws of 1981, hereby establish the state employee pay schedules for fiscal years 1982 and 1983 as set forth herein. By law, these pay schedules shall supersede the pay schedules contained in Sections 2-18-311 through 2-18-315, MCA, and all statutory references contained in Title 2, Chapter 18, MCA shall refer to the schedules established herein.

The state employee pay schedules for fiscal years 1982 and 1983 as set forth [in] this Executive Order shall be effective on the first day of the first full pay period of the fiscal year to which they apply." The pay schedules are listed in compiler's comments under the appropriate sections.

2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the compensation necessary to attract and retain competent and qualified employees in order to perform the services the state is required to provide to its citizens.

(2) It is the intent of the legislature that, for the biennium ending June 30, 1983, the:

(a) pay schedules provided for in [the adjusted schedules under] 2-18-311 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the 47th legislature;

(b) pay levels provided for in [the adjusted schedules under] 2-18-311 through 2-18-315 may not be increased through collective bargaining after adjournment of the 47th legislature; and

(c) total funds required to implement the pay schedules provided for in [the adjusted schedules under] 2-18-311 through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the 47th legislature.

(3) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(4) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

History: En. 59-922 by Sec. 8, Ch. 563, L. 1977; R.C.M. 1947, 59-922; amd. Sec. 3, Ch. 678, L. 1979; amd. Sec. 3, Ch. 421, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "1983" for "1981" in (2); substituted "47th legislature" for "46th legislature" in (2)(a), (2)(b), and (2)(c).

Code Commissioner Correction: The bracketed language in this section was added by the code commissioner to reflect the intent of the governor's adoption of pay schedules as authorized by 2-18-311 and implemented by Executive Order No. 7-81. See part compiler's comments at Title 2, ch. 18, part 3.

Effective Date: Section 12(1), Ch. 421, L. 1981, provided: "Sections 1 through 15, excluding section 2, are effective July 11, 1981."

2-18-302. Salary schedules maintained by department. The department shall maintain a schedule of all salaries paid to personnel of civil executive state offices and shall only approve payroll claims agreeing with that schedule. All changes in personnel or salary status shall be authorized as provided by law, and the department shall alter the schedule accordingly when notified by the authorizing agency. However, no changes in personnel or salary status may be authorized that will cause an agency to exceed its appropriation or that will result in a deficiency or supplemental appropriation request to the legislature.

History: **En. Sec. 4, Ch. 97, L. 1961; amd. Sec. 49, Ch. 326, L. 1974; R.C.M. 1947, 82-109.4.**

2-18-303. Procedures for utilizing pay schedules. (1) The pay schedules provided in [the adjusted schedules under] 2-18-311 and 2-18-312 shall be implemented as follows:

(a) The pay schedule provided in [the adjusted schedule under] 2-18-311 indicates the annual compensation for the fiscal year ending June 30, 1982, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) The pay schedule provided in [the adjusted schedule under] 2-18-312 indicates the annual compensation for the fiscal year ending June 30, 1983, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(c) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(d) (i) The compensation of each employee on the first day of the first pay period in fiscal year 1982 shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of 1981.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1983 shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year 1982.

(iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay matrix each fiscal year. However, if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of fiscal year 1982 or 1983, as the case may be, he will advance one step on the first day of that pay period.

(2) The pay schedules provided in [the adjusted schedules under] 2-18-311 and 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in [the adjusted schedules under] 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in [the adjusted schedules under] 2-18-313, 2-18-314, or 2-18-315 shall be implemented as follows:

(a) (i) The pay schedules provided in [the adjusted schedules under] 2-18-313 indicate the annual compensation for the contracted school term for teachers employed by institutions under the authority of the department of institutions for fiscal years 1982 and 1983.

(ii) The compensation of each teacher on the first day of the first pay period in July, 1981, shall be that amount which corresponds to his level of academic achievement and the next highest step from that occupied on June 30, 1981.

(iii) The compensation of each teacher on the first day of the first pay period in July, 1982, shall be that amount which corresponds to his level of achievement and the next highest step from that occupied on June 30, 1982.

(b) (i) The pay schedules provided in [the adjusted schedules under] 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, 1982, and June 30, 1983, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1982 or 1983, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in [the adjusted schedules under] 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 1982, and June 30, 1983, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1982 or 1983, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) No member of a bargaining unit may receive the amounts indicated in the respective pay schedules provided in [the adjusted schedules under] 2-18-311 through 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, 1983.

(ii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1981, retroactivity to that date may be negotiated.

(iii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, 1981, members of the bargaining unit involved will continue to receive the compensation they were receiving as of June 30, 1981.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in [the adjusted schedules under] 2-18-313 through 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee shall not be reduced by the implementation of the pay schedules provided for in [the adjusted schedules under] 2-18-311 through 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in [the adjusted schedules under] 2-18-311 and 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs which will enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may

apply to employees within a collective bargaining unit, it shall be a negotiable subject under 39-31-305.

History: En. 59-916 by Sec. 2, Ch. 563, L. 1977; R.C.M. 1947, 59-916; amd. Sec. 4, Ch. 678, L. 1979; amd. Sec. 4, Ch. 421, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "1982" for "1980" in (1), (3)(a)(i), (3)(b) and (3)(c); substituted "1983" for "1981" in (1), (3)(a)(i), (3)(b), (3)(c), and (4); substituted "1981" for "1979" in (1)(d), at the end of (3)(a)(ii) and (4); substituted "1981" for "1980" in (3)(a)(ii); substituted "first pay period in July, 1982" for "first pay period in July, 1981" in (3)(a)(iii); substituted "step" for "grade" in (3)(a)(ii) and (iii); made minor grammatical changes.

Code Commissioner Correction: The bracketed language in this section was added by the code commissioner to reflect the intent of the governor's adoption of pay schedules as authorized by 2-18-311 and implemented by Executive Order No. 7-81. See part compiler's comments at Title 2, ch. 18, part 3.

2-18-304. Longevity allowance. In addition to the compensation provided for in [the adjusted schedules under] 2-18-311, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service shall receive the larger of $10 a month or 10% of the difference between the base compensation for his grade and step (where applicable) and the base compensation for the next highest grade and corresponding step (where applicable) multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service. Service to the state is not interrupted by authorized leaves of absence.

History: En. 59-920 by Sec. 6, Ch. 563, L. 1977; R.C.M. 1947, 59-920; amd. Sec. 5, Ch. 678, L. 1979.

Compiler's Comments

Code Commissioner Correction: The bracketed language in this section was added by the Code Commissioner to reflect the intent of the Governor's adoption of pay schedules as authorized by 2-18-311 and implemented by Executive Order No. 7-81. See Part Compiler's Comments at Title 2, ch. 18, part 3.

2-18-305. Allocation between wages and group benefits. (1) The dollar amounts shown in the respective pay schedules provided in [the adjusted schedules under] 2-18-311, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, as the case may be, represent the maximum amount allocated by the state for wages and group benefits, exclusive of longevity as defined in 2-18-304. Except as provided in subsection (2) of this section, that amount specifically allocated for group benefits shall be determined by 2-18-703. An employee who elects not to be covered by a state employee group benefit plan will receive as wages the amount shown in the appropriate pay schedule less the state contribution for group benefits as determined by 2-18-703.

(2) Employees may, through collective bargaining, determine the allocation of the amounts shown in the pay schedules provided in [the adjusted schedules under] 2-18-311, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, as the case may be, between wages and group benefits, except that in no case may the group benefits allocation be less than the amounts provided in 2-18-703.

History: En. 59-919 by Sec. 5, Ch. 563, L. 1977; R.C.M. 1947, 59-919; amd. Sec. 6, Ch. 678, L. 1979.

Compiler's Comments

Code Commissioner Correction: The bracketed language in this section was added by the code commissioner to reflect the intent of the Governor's adoption of pay schedules as authorized by 2-18-311 and implemented by Executive Order No. 7-81. See part compiler's comments at Title 2, ch. 18, part 3.

2-18-306. Determination of weekly or hourly pay rate. When the monthly or annual salary rate payable to an officer or employee of the state has been set by law or otherwise, notwithstanding any other provision of law, the weekly or hourly rate of pay shall be determined by dividing the annual salary by 52 weeks or 2,080 hours.

History: En. Sec. 9, Ch. 95, L. 1969; R.C.M. 1947, 25-507.9.

2-18-307. Repealed. Sec. 17, Ch. 678, L. 1979.

History: En. 59-921 by Sec. 7, Ch. 563, L. 1977; R.C.M. 1947, 59-921.

2-18-308 through 2-18-310 reserved.

2-18-311. Pay schedule authorization — pay schedule for fiscal year 1982. Pay schedules for fiscal years 1982 and 1983 shall be adjusted by the governor in a manner which will cost no more for pay raises than the appropriation contained in Chapter 421, Laws of 1981.

History: En. 59-917 by Sec. 3, Ch. 563, L. 1977; R.C.M. 1947, 59-917; amd. Sec. 7, Ch. 678, L. 1979; amd. Sec. 5, Ch. 421, L. 1981.

Compiler's Comments

Pay Schedule Adopted: Prior to amendment in 1981 this section contained the fiscal year 1980 general pay schedule. The section as amended in 1981 provides that the Governor shall adopt pay schedules for fiscal years 1982 and 1983. In adopting the fiscal year 1982 general pay schedule, Executive Order No. 7-81 provided that the 1982 schedule superseded the one found previously in that section. For that reason and because of many references in the MCA made to the pay schedule under this section, the Code Commissioner has printed the Governor's fiscal year 1982 general pay schedule as a compiler's comment under this section. For a comprehensive explanation of the adoption of the pay schedules and their effective dates, see the part compiler's comments under Title 2, ch. 18, part 3.

The following is the adjusted general pay schedule adopted by the Governor in Executive Order No. 7-81 for fiscal year 1983:

"Pay Schedule for Fiscal Year 1982 (Supersedes Schedule
set forth in Section 2-18-311, MCA [1979])

Annual Hours — 2080
Pay Matrix — State

Note: Includes Insurance
Matrix Type — Annual

Grade	STEP 01	STEP 02	STEP 03	STEP 04	STEP 05	STEP 06	STEP 07	STEP 08	STEP 09	STEP 10	STEP 11	STEP 12	STEP 13
1	7,375	7,744	7,899	8,057	8,218	8,382	8,550	8,721	8,895	9,073	9,254	9,439	9,628
2	7,830	8,222	8,386	8,554	8,725	8,900	9,078	9,260	9,445	9,634	9,827	10,024	10,224
3	8,329	8,745	8,920	9,098	9,280	9,466	9,655	9,848	10,045	10,246	10,451	10,660	10,873
4	8,870	9,313	9,499	9,689	9,883	10,081	10,283	10,489	10,699	10,913	11,131	11,354	11,581
5	9,468	9,941	10,140	10,343	10,550	10,761	10,976	11,196	11,420	11,648	11,881	12,119	12,361
6	10,123	10,629	10,842	11,059	11,280	11,506	11,736	11,971	12,210	12,454	12,703	12,957	13,216
7	10,849	11,391	11,619	11,851	12,088	12,330	12,577	12,829	13,086	13,348	13,615	13,887	14,165
8	11,631	12,213	12,457	12,706	12,960	13,219	13,483	13,753	14,028	14,309	14,595	14,887	15,185
9	12,502	13,127	13,390	13,658	13,931	14,210	14,494	14,784	15,080	15,382	15,690	16,004	16,324
10	13,454	14,127	14,410	14,698	14,992	15,292	15,598	15,910	16,228	16,553	16,884	17,222	17,566
11	14,494	15,219	15,523	15,833	16,150	16,473	16,802	17,138	17,481	17,831	18,188	18,552	18,923
12	15,647	16,429	16,758	17,093	17,435	17,784	18,140	18,503	18,873	19,250	19,635	20,028	20,429
13	16,900	17,745	18,100	18,462	18,831	19,208	19,592	19,984	20,384	20,792	21,208	21,632	22,065
14	18,443	19,365	19,752	20,147	20,550	20,961	21,380	21,808	22,244	22,689	23,143	23,606	24,078
15	20,005	21,005	21,425	21,854	22,291	22,737	23,192	23,656	24,129	24,612	25,104	25,606	26,118
16	21,748	22,835	23,292	23,758	24,233	24,718	25,212	25,716	26,230	26,755	27,290	27,836	28,393
17	23,637	24,819	25,315	25,821	26,337	26,864	27,401	27,949	28,508	29,078	29,660	30,253	30,858
18	25,722	27,008	27,548	28,099	28,661	29,234	29,819	30,415	31,023	31,643	32,276	32,922	33,580
19	28,015	29,416	30,004	30,604	31,216	31,840	32,477	33,127	33,790	34,466	35,155	35,858	35,858
20	30,517	32,043	32,684	33,338	34,005	34,685	35,379	36,087	36,809	37,545	38,296	38,296	38,296
21	33,271	34,935	35,634	36,347	37,074	37,815	38,571	39,342	40,129	40,932	40,932	40,932	40,932
22	36,292	38,107	38,869	39,646	40,439	41,248	42,073	42,914	43,772	43,772	43,772	43,772	43,772
23	39,598	41,578	42,410	43,258	44,123	45,005	45,905	46,823	46,823	46,823	46,823	46,823	46,823
24	43,230	45,392	46,300	47,226	48,171	49,134	50,117	50,117	50,117	50,117	50,117	50,117	50,117
25	47,220	49,581	50,573	51,584	52,616	53,668	53,668	53,668	53,668	53,668	53,668	53,668	53,668

Effective Date: Section 12(1), Ch. 421, L. 1981, provided: "Sections 1 through 15, excluding section 2, are effective July 11, 1981."

2-18-312. Pay schedule for fiscal year 1983. *(Not codified — see compiler's comments)*

History: En. 59-918 by Sec. 4, Ch. 563, L. 1977; R.C.M. 1947, 59-918; amd. Sec. 8, Ch. 678, L. 1979.

Compiler's Comments

Pay Schedule Adopted: This section previously contained the general pay schedule for fiscal year 1981. Although this section was not repealed, that schedule was not codified by the Code Commissioner because sec. 5, Ch. 421, L. 1981, authorized the Governor to adopt new pay schedules. For a comprehensive explanation of the adoption of the pay schedules and the effective dates thereof, see part compiler's comments, Title 2, ch. 18, part 3.

The following is the adjusted general pay schedule adopted by the Governor in Executive Order No. 7-81 for fiscal year 1983:

"Pay Schedule for Fiscal Year 1983 (Supersedes Schedule set forth in Section 2-18-312, MCA [1979])

Annual Hours — 2080
Pay Matrix — State

Note: Includes Insurance
Matrix Type — Annual

Grade	STEP 01	STEP 02	STEP 03	STEP 04	STEP 05	STEP 06	STEP 07	STEP 08	STEP 09	STEP 10	STEP 11	STEP 12	STEP 13
1	8,343	8,856	9,033	9,214	9,398	9,586	9,778	9,974	10,173	10,376	10,584	10,796	11,012
2	8,913	9,359	9,546	9,737	9,932	10,131	10,335	10,541	10,752	10,967	11,186	11,410	11,638
3	9,435	9,907	10,105	10,307	10,513	10,723	10,937	11,156	11,379	11,607	11,839	12,076	12,318
4	10,004	10,504	10,714	10,928	11,147	11,370	11,597	11,829	12,066	12,307	12,553	12,804	13,060
5	10,631	11,163	11,386	11,614	11,846	12,083	12,325	12,572	12,823	13,079	13,341	13,608	13,880
6	11,319	11,885	12,123	12,365	12,612	12,864	13,121	13,383	13,651	13,924	14,202	14,486	14,776
7	12,082	12,686	12,940	13,199	13,463	13,732	14,007	14,287	14,573	14,864	15,161	15,464	15,773
8	12,904	13,549	13,820	14,096	14,378	14,666	14,959	15,258	15,563	15,874	16,191	16,515	16,845
9	13,817	14,508	14,798	15,094	15,396	15,704	16,018	16,338	16,665	16,998	17,338	17,685	18,039
10	14,817	15,558	15,869	16,186	16,510	16,840	17,177	17,521	17,871	18,228	18,593	18,965	19,344
11	15,910	16,705	17,039	17,380	17,728	18,083	18,445	18,814	19,190	19,574	19,965	20,364	20,771
12	17,119	17,975	18,335	18,702	19,076	19,458	19,847	20,244	20,649	21,062	21,483	21,913	22,351
13	18,435	19,357	19,744	20,139	20,542	20,953	21,372	21,799	22,235	22,680	23,134	23,597	24,069
14	20,055	21,058	21,479	21,909	22,347	22,794	23,250	23,715	24,189	24,673	25,166	25,669	26,182
15	21,745	22,832	23,289	23,755	24,230	24,715	25,209	25,713	26,227	26,752	27,287	27,833	28,390
16	23,640	24,822	25,318	25,824	26,340	26,867	27,404	27,952	28,511	29,081	29,663	30,256	30,861
17	25,693	26,978	27,518	28,068	28,629	29,202	29,786	30,382	30,990	31,610	32,242	32,887	33,545
18	27,960	29,358	29,945	30,544	31,155	31,778	32,414	33,062	33,723	34,397	35,085	35,787	36,503
19	30,452	31,975	32,615	33,267	33,932	34,611	35,303	36,009	36,729	37,464	38,213	38,977	38,977
20	33,172	34,831	35,528	36,239	36,964	37,703	38,457	39,226	40,011	40,811	41,627	41,627	41,627
21	36,166	37,974	38,733	39,508	40,298	41,104	41,926	42,765	43,620	44,492	44,492	44,492	44,492
22	39,450	41,422	42,250	43,095	43,957	44,836	45,733	46,648	47,581	47,581	47,581	47,581	47,581
23	43,043	45,195	46,099	47,021	47,961	48,920	49,898	50,896	50,896	50,896	50,896	50,896	50,896
24	46,991	49,341	50,328	51,335	52,362	53,409	54,477	54,477	54,477	54,477	54,477	54,477	54,477
25	51,329	53,895	54,973	56,072	57,193	58,337	58,337	58,337	58,337	58,337	58,337	58,337	58,337

2-18-313. Pay schedules for institutional teachers. *(Not codified — see compiler's comments)*

History: En. Sec. 9, Ch. 678, L. 1979.

Compiler's Comments

Pay Schedule Adopted: This section previously contained the teachers' pay schedules for fiscal years 1981 and 1982. Although this section was not repealed, those schedules were not codified by the code commissioner because sec. 5, Ch. 421, L. 1981, authorized the governor to adopt new pay schedules. For a comprehensive explanation of the adoption of the pay schedules and the effective dates thereof see part compiler's comments, Title 2, ch. 18, part 2.

The following is the adjusted teachers' pay schedules adopted by the governor in Executive Order No. 7-81 for fiscal years 1982 and 1983:

Pay Schedules for Institutional Teachers (Supersedes Schedules set forth in Section 2-18-313, MCA [1979])

Annual Hours — 2080
Pay Matrix — Teachers
Term — Nine Month

Note: Includes Insurance
Matrix Type — Annual

Fiscal Year 1982

Education

EXP (Step)	BA (Grade 1)	BA+1 (Grade 2)	BA+2 (Grade 3)	BA+3 (Grade 4)	MA (Grade 5)	MA+1 (Grade 6)
0	11,863	12,238	12,624	12,811	12,998	13,384
1	12,304	12,723	13,142	13,351	13,561	13,979
2	12,745	13,208	13,660	13,891	14,123	14,575
3	13,186	13,693	14,178	14,431	14,685	15,170
4	13,627	14,178	14,696	14,971	15,247	15,765
5	14,068	14,663	15,214	15,512	15,809	16,360
6	14,509	15,148	15,732	16,052	16,371	16,956
7	14,949	15,633	16,250	16,592	16,934	17,551
8	15,390	16,118	16,768	17,132	17,496	18,146
9	15,831	16,603	17,286	17,672	18,058	18,741
10	16,272	17,083	17,804	18,212	18-620	19,337

Fiscal Year 1983

Education

EXP (Step)	BA (Grade 1)	BA+1 (Grade 2)	BA+2 (Grade 3)	BA+3 (Grade 4)	MA (Grade 5)	MA+1 (Grade 6)
0	12,699	13,098	13,509	13,709	13,908	14,319
1	13,169	13,615	14,061	14,284	14,507	14,953
2	13,638	14,131	14,612	14,859	15,105	15,587
3	14,108	14,648	15,164	15,434	15,704	16,221
4	14,577	15,164	15,716	16,009	16,303	16,855
5	15,047	15,681	16,268	16,585	16,902	17,489
6	15,516	16,197	16,819	17,160	17,500	18,122
7	15,986	16,714	17,371	17,735	18,099	18,756
8	16,455	17,230	17,923	18,310	18,698	19,390
9	16,925	17,747	18,475	18,885	19,296	20,024
10	17,397	18,263	19,026	19,461	19,895	20,658

2-18-314. Pay schedules for liquor store occupations. *(Not codified — see compiler's comments)*

History: En. Sec. 10, Ch. 678, L. 1979.

Compiler's Comments

Pay Schedule Adopted: This section previously contained liquor store pay schedules for fiscal years 1980 and 1981. Although this section was not repealed, those schedules were not codified by the Code Commissioner because sec. 5, Ch. 421, L. 1981, authorized the Governor to adopt new pay schedules. For a comprehensive explanation of the adoption of the pay schedules and their effective dates see Part Compiler's Comments, Title 2, ch. 18, part 3.

The following are the adjusted liquor store pay schedules adopted by the Governor in Executive Order No. 7-81 for fiscal years 1982 and 1983:

"Pay Schedules for Liquor Store Occupations (Supersedes
Schedules set forth in Section 2-18-314, MCA [1979])

Annual Hours — 2080
Pay Matrix — Retail Clerk

Note: Includes Insurance
Matrix Type — Hourly

Fiscal Year 1982

Grade	$/Hour
L1	0.000
L2	5.959
L3	6.367
L4	6.598
L5	6.842
L6	7.350
L7	7.904
L8	8.525

Fiscal Year 1983

Grade	$/Hour
L1	0.000
L2	6.728
L3	7.201
L4	7.462
L5	7.736
L6	8.311
L7	8.937
L8	9.639"

2-18-315. Pay schedules for blue-collar occupations. *(Not codified — see compiler's comments)*

History: **En. Sec. 11, Ch. 678, L. 1979.**

Compiler's Comments

Pay Schedule Adopted: This section previously contained blue-collar pay schedules for fiscal years 1980 and 1981 and provisions relating to the reduction of pay rate disparity. Although this section was not repealed, it was not codified by the code commissioner because sec. 5, Ch. 421, L. 1981, authorized the Governor to adopt new pay schedules. For a comprehensive explanation of the adoption of the pay schedules and their effective dates see part compiler's comments, Title 2, ch. 18, part 3.

The following are the adjusted blue-collar pay schedules adopted by the Governor in Executive Order No. 7-81 for fiscal years 1982 and 1983:

"Pay Schedules for Blue-Collar Occupations (Supersedes Schedules set forth in Section 2-18-315, MCA [1979])

Annual Hours — 2080
Pay Matrix — Blue-Collar

Note: Includes Insurance
Matrix Type — Hourly

Fiscal Year 1982

Grade	$/Hour
B1	5.904
B2	6.304
B3	6.704
B4	7.104
B5	7.504
B6	7.904
B7	8.304
B8	8.704
B9	9.104
B10	9.504
B11	9.904
B12	10.304
B00**	10.704

Fiscal Year 1983

Grade	$/Hour
B1	6.892
B2	7.292
B3	7.692
B4	8.092
B5	8.492
B6	8.892
B7	9.292
B8	9.692
B9	10.092
B10	10.492
B11	10.892
B12	11.292
B00**	11.692"

Part 4

Payroll Systems

2-18-401. Central payroll system — state auditor to provide for inclusion of agencies. The state auditor shall install and operate a uniform state central payroll system for all state agencies. The auditor may provide for the orderly inclusion of state agencies into such system and may make exceptions from the operation thereof for such periods as he determines necessary.

History: En. Sec. 1, Ch. 95, L. 1969; amd. Sec. 1, Ch. 51, L. 1977; R.C.M. 1947, 25-507.1(part).

2-18-402. Payroll revolving account — auditor to determine disbursements and transfers. (1) An account in the revolving fund of the state treasury is hereby created, to be known as the state payroll revolving account, which account may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld therefrom, pursuant to law.

(2) The amount to be disbursed from the state payroll revolving account at any time shall be determined by the state auditor and, on his order, shall be transferred forthwith from the fund, account, and appropriation otherwise properly chargeable therewith to the state payroll revolving account.

History: **En. Sec. 8, Ch. 95, L. 1969; R.C.M. 1947, 25-507.8.**

2-18-403. Service charges. The state auditor may provide for a system of charges for services rendered by the state central payroll system to any department or agency of the state. Funds collected under this section shall be deposited to the credit of a revolving fund account and expended for the purpose of paying the expenses incurred by the state central payroll system.

History: **En. Sec. 10, Ch. 95, L. 1969; R.C.M. 1947, 25-507.10.**

2-18-404. Payroll roster — changes certified by appointing powers. (1) The state auditor shall establish and maintain a payroll roster of all persons employed by every state agency and may establish and maintain a roster of all established positions. The payroll roster shall include both merit system and exempt employees but shall not necessarily include emergency appointees or the equivalent.

(2) Each appointing power shall correctly and promptly certify to the state auditor all changes, modifications, additions, and deletions to the payroll roster in compliance with all applicable merit service, fiscal, and other pertinent laws and rules.

(3) The state central payroll system shall disburse or otherwise act in reliance upon all payroll roster certifications and attendance reports certified to the state auditor by the respective appointing powers.

History: **En. Secs. 4, 5, Ch. 95, L. 1969; R.C.M. 1947, 25-507.4, 25-507.5.**

2-18-405. Payroll based on actual, end-of-period figures — pay date — change of payroll periods. (1) By January 1, 1979, all state payroll systems shall be based upon actual payroll figures submitted after the end of the payroll period and may not be based upon estimated payroll.

(2) All state payroll systems shall provide for the fixing of payroll periods and designated days on which salaried employees shall be paid for the preceding payroll period. The pay date shall be uniform for all employees of each state agency employed in the same geographic area and payroll warrants shall be distributed or mailed within 10 business days following the close of the payroll period.

(3) The payroll period of employees of a state agency may not be changed by inclusion of the agency into the state payroll system or by any revision or modification of the system unless notice of the proposed change has been given to each employee who will be affected by such change in the form and

manner prescribed by the state auditor not less than 60 days prior to the effective date of the change.

History: (1), (2)En. Secs. 1, 2, Ch. 95, L. 1969; amd. Secs. 1, 2, Ch. 51, L. 1977; Secs. 25-507.1, 25-507.2, R.C.M. 1947; (3)En. Sec. 3, Ch. 95, L. 1969; Sec. 25-507.3, R.C.M. 1947; R.C.M. 1947, 25-507.1(part), 25-507.2, 25-507.3; amd. Sec. 29, Ch. 184, L. 1979.

2-18-406 through 2-18-410 reserved.

2-18-411. Lost warrants — duplicate. (1) Upon receipt of proof satisfactory to the state auditor that a payroll warrant issued by the state auditor has been lost or destroyed prior to its delivery to the employee to whom it is payable, the state auditor shall, upon certification by the payee's appointing power, issue a duplicate warrant in payment of the same amount without requiring a bond from the payee and any loss incurred in connection therewith shall be charged against the account from which the payment was derived.

(2) A payroll warrant shall be considered to have been lost if it has been sent to the payee but not received by him within a reasonable time, consistent with the policy of prompt payment of employees, or if it has been sent to a state officer or employee for delivery to the payee or for forwarding to another state officer or employee for such delivery and has not been received within such reasonable time.

History: En. Sec. 6, Ch. 95, L. 1969; R.C.M. 1947, 25-507.6.

2-18-412. Designation of person to receive decedent's warrants — reissuance. Any person now or hereafter employed by the state may file with his appointing power a designation of a person who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants from the state auditor and on sufficient proof of identity, the state auditor shall reissue the warrant in the name of the designated person and deliver said warrant to the designated person.

History: En. Sec. 7, Ch. 95, L. 1969; R.C.M. 1947, 25-507.7.

Part 5

Travel, Meals, and Lodging

2-18-501. Meals, lodging, and transportation of persons in state service. Every elected official, appointed members of boards, commissions, councils, department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) For travel within the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed $55 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding $24 per day except as provided in subsection (3), plus $3 for the morning meal, $3.50 for the midday meal, and $7 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized the actual cost of lodging in addition to a meal allowance not to exceed $30 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding $50 per day, except as provided in subsection (3), plus $4 for the morning meal, $6.50 for the midday meal, and $12 for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(3) All other elected state officials, appointed members of boards, commissioners, council, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas where the actual cost of lodging shall be reimbursed.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(b) or (2)(b) above. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(5) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(6) The provisions of this section shall not be construed as affecting the validity of 5-2-301.

(7) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(8) All commercial air travel shall be by the least expensive class service available.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969; amd. Sec. 1, Ch. 10, L. 1971; amd. Ch. 295, L. 1971; amd. Sec. 3, Ch. 495, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 439, L. 1975; amd. Sec. 1, Ch. 483, L. 1977; R.C.M. 1947, 59-538; amd. Sec. 1, Ch. 643, L. 1979; amd. Sec. 1, Ch. 338, L. 1981; amd. Sec. 1, Ch. 582, L. 1981; amd. Sec. 13, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 582 increased $40 per day to $55 per day in (1)(a); increased the maximum reimbursement for lodging from $21 to $24 in (1)(b); increased the allowance for the morning meal from $2 to $3 in (1)(b); increased the allowance for the evening meal from $6.50 to $7 in (1)(b); substituted "cost of lodging in addition to a meal allowance" for "and necessary travel expenses" in (2)(a); increased the out-of-state lodging allowance from $40 to $50 in (2)(b); increased the morning meal allowance from $3 to $4 in (2)(b); increased the midday meal allowance from $5 to

$6.50 in (2)(b); increased the evening meal allowance from $8.50 to $12 in (2)(b); inserted "other" after "All" at the beginning of (3); and deleted "in the United States" after "The department of administration shall designate those areas" in the last sentence of (3).

Chapter 338 amended subsections (2)(a) and (3) exactly the same as done in Ch. 582.

Chapter 575 redesignated subsection (2)(c) as (3); in (1)(b), changed the internal reference from "subsection (2)(c)" to "subsection (3)"; in (2)(b), inserted "except as provided in subsection (3)".

2-18-502. Computation of meal allowance. (1) To be eligible for the meal allowance provided in 2-18-501, an employee must have been in a travel status for more than 3 continuous hours. If eligible, an employee receives:

(a) the morning meal allowance if in a travel status between the hours of 12:01 a.m. and 10 a.m.;

(b) the midday meal allowance if in a travel status between the hours of 10:01 a.m. and 3 p.m.; and

(c) the evening meal allowance if in a travel status between the hours of 3:01 p.m. and 12 midnight;

(d) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift;

(e) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

(2) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.

(3) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

History: En. Sec. 3, Ch. 66, L. 1955; amd. Sec. 4, Ch. 495, L. 1973; amd. Sec. 1, Ch. 213, L. 1974; amd. Sec. 2, Ch. 439, L. 1975; amd. Sec. 2, Ch. 483, L. 1977; R.C.M. 1947, 59-539.

2-18-503. Mileage — allowance. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds, when using their own automobiles in the performance of official duties, are entitled to collect mileage for the distance actually traveled by automobile and no more unless otherwise specifically provided by law.

(2) When the individual is authorized to operate a privately owned vehicle even though a government-owned or leased vehicle is available, a rate of 3 cents less per mile than the mileage rate allowed by the United States internal revenue service for the preceding year shall be paid.

(3) When a privately owned vehicle is used because a government-owned or leased vehicle is not available or because such use is in the best interest of the governmental entity, a rate equal to the mileage allotment allowed by the United States internal revenue service for the preceding year shall be paid for the first 1,000 miles and 3 cents per mile less for all miles thereafter traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds, when using their own airplanes in the performance of official duties, are entitled to collect mileage for the nautical air miles

actually traveled at a rate of twice the mileage allotment for automobile travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe rules necessary for the effective administration of this section for state government.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R.C.M. 1921; amd. Sec. 1, Ch. 16, L. 1933; re-en. Sec. 4884, R.C.M. 1935; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963; amd. Sec. 2, Ch. 48, L. 1967; amd. Sec. 1, Ch. 495, L. 1973; amd. Sec. 9, Ch. 355, L. 1974; amd. Sec. 3, Ch. 439, L. 1975; amd. Sec. 1, Ch. 532, L. 1975; amd. Sec. 1, Ch. 453, L. 1977; R.C.M. 1947, 59-801; amd. Sec. 1, Ch. 622, L. 1979.

2-18-504. Mileage computed by shortest traveled route. Wherever mileage is allowed to any sheriff or other officer, juror, witness, or other person under any law of Montana, the same shall be computed according to the shortest traveled route, when such shortest route is passable.

History: En. Sec. 1, Ch. 7, L. 1919; re-en. Sec. 4901, R.C.M. 1921; re-en. Sec. 4901, R.C.M. 1935; R.C.M. 1947, 25-217.

2-18-505 through 2-18-510 reserved.

2-18-511. Claim for expenses. Every such person so engaged shall periodically submit a claim containing a schedule of expenses and amounts claimed for said period. Said schedule shall show in what capacity such person was engaged each day while away from the department in which said daily duties arose and shall show expense items of each day in detail, such as the amount of per diem allowance claimed, transportation fare, mileage, and other such items.

History: En. Sec. 4, Ch. 66, L. 1955; amd. Sec. 26, Ch. 97, L. 1961; R.C.M. 1947, 59-540.

2-18-512. Prohibition on travel expenses for conventions — exception. Hereafter, no state officer or employee of the state shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gatherings as said officer or employee may by virtue of his office find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part).

Part 6

Leave Time

2-18-601. Definitions. For the purpose of this part, the following definitions apply:

(1) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof.

(2) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(3) "Permanent employee" means an employee who is assigned to a position designated as permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

(4) "Part-time employee" means an employee who normally works less than 40 hours a week.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Temporary employee" means an employee assigned to a position designated as temporary on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months.

(7) "Seasonal employee" means an employee assigned to a position designated as seasonal on the appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a permanent need but which is interrupted by the seasonal nature of the assignment.

(8) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer.

(9) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or his immediate family.

(10) "Sick-pay plan" means a plan that:

(a) provides for an agency to make payments in lieu of wages to employees on account of sickness or accident disability; and

(b) meets the requirements of 42 U.S.C. 409(b) or (d).

(11) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

(12) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(13) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

History: En. Sec. 1, Ch. 476, L. 1973; R.C.M. 1947, 59-1007.1; amd. Sec. 30, Ch. 184, L. 1979; amd. Sec. 3, Ch. 568, L. 1979; amd. Sec. 1, Ch. 178, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (10) relating to the sick-pay plan.

2-18-602. Repealed. Sec. 12, Ch. 568, L. 1979.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; R.C.M. 1947, 59-510(1)(part).

2-18-603. Holidays — observance when falling on employee's day off. (1) Any full-time employee who is scheduled for a day off on a day which is observed as a legal holiday, except Sundays, shall be entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and his supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the employee is in a pay status on his last regularly scheduled working day immediately before the holiday or on his first regularly scheduled working day immediately after the holiday. Part-time employees receive pay for the holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

(2) For purposes of this section, the term "employee" does not include nonteaching school district employees.

History: En. Sec. 1, Ch. 108, L. 1971; R.C.M. 1947, 59-1009; amd. Sec. 4, Ch. 568, L. 1979; amd. Sec. 1, Ch. 312, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and his supervisor" for "a day off either on the day preceding or the day following the holiday" in (1); inserted the phrase beginning with "provided the employee . . ." at the end of the first sentence in (1); substituted "pay" for "paid holiday time off based only on the number of hours scheduled" in (1); added the phrase beginning with "on a prorated basis . . .." at the end of (1).

2-18-604. Administration of rules. The department of administration or the administrative officer of any county, city, or political subdivision is responsible for the proper administration of the employee annual, sick, or military leave provisions and the jury duty provisions found in this part and shall promulgate rules necessary to achieve the uniform administration of these provisions and to prevent the abuse thereof. When promulgated, the rules are effective as to all employees of the state or any county, city, or political subdivision thereof.

History: En. Sec. 10, Ch. 568, L. 1979.

2-18-605. Sick-pay plan for state employees. The department of administration shall develop and administer a sick-pay plan for state employees. The plan shall be based on the use of sick leave credits provided for in 2-18-618. Payments from the plan may be made only from funds appropriated for that purpose. Until the plan is developed and implemented or if no funds are appropriated or if appropriated funds are insufficient to fully fund the plan, state employees may utilize sick leave provided for in 2-18-618, including accrued sick leave.

History: En. Sec. 2, Ch. 178, L. 1981.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 302 (Ch. 178, L. 1981) provided: "The intent of House Bill 302 is to give the Department of Administration the authority to pay sick pay in accordance with the criteria established in 42 U.S.C. 409(b) or (d). This authority will allow the state of Montana and other political subdivisions to take advantage of the option to exclude payments of sick pay (for illness) from the Social Security (FICA) Tax."

Saving Clause: Section 3, Ch. 178, L. 1981, provided: "This act does not affect existing rights to sick leave under 2-18-618, including accrued sick leave; provided, however, that the department of administration may utilize the use of sick leave credits provided for in 2-18-618 in developing and administering a sick-pay plan for state employees."

Codification in Leave Time Part: Section 2, Ch. 178, L. 1981 (2-18-605), was enacted without a codification instruction. Since it was apparently intended that the section become an integral part of this part 6 on leave time, the Code Commissioner has codified it accordingly. This codification affects the apparent application of 2-18-601 and 2-18-604.

2-18-606 through 2-18-610 reserved.

2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. For calculating vacation leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. Vacation leave credits earned shall be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees shall earn vacation credits. However, such persons must be employed 6 qualifying months before they may use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status exceeding 15 working days.

(5) Temporary employees do not earn vacation leave credits, except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months may count as earned leave credits for the immediate term of temporary employment.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(1), (4); amd. Sec. 5, Ch. 568, L. 1979.

2-18-612. Rate earned. Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

Years of employment	Working days credit
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(3); amd. Sec. 6, Ch. 568, L. 1979.

2-18-613. Repealed. Sec. 12, Ch. 568, L. 1979.

History: En. Sec. 4, Ch. 131, L. 1949; amd. Sec. 4, Ch. 350, L. 1969; R.C.M. 1947, 59-1004.

2-18-614. Military leave considered service. A period of absence from employment with the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:

(1) having been ordered on active duty with the armed forces of the United States;

(2) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or

(3) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer.

History: **En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(2).**

2-18-615. Absence because of illness not chargeable against vacation unless employee approves. Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.

History: **En. Sec. 5, Ch. 131, L. 1949; amd. Sec. 5, Ch. 350, L. 1969; amd. Sec. 4, Ch. 476, L. 1973; R.C.M. 1947, 59-1005.**

2-18-616. Determination of vacation dates. The dates when employees' annual vacation leaves shall be granted shall be determined by agreement between each employee and his employing agency with regard to the best interest of the state, any county or city thereof as well as the best interests of each employee.

History: **En. Sec. 6, Ch. 131, L. 1949; R.C.M. 1947, 59-1006.**

2-18-617. Accumulation of leave — cash for unused — transfer. (1) Annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(2) An employee who terminates his employment for reason not reflecting discredit on himself shall be entitled upon the date of such termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611.

(3) However, if an employee transfers between agencies of the same jurisdiction, there shall be no cash compensation paid for unused vacation leave. In such a transfer the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

History: **(1)En. Sec. 2, Ch. 131, L. 1949; amd. Sec. 2, Ch. 350, L. 1969; amd. Sec. 2, Ch. 121, L. 1971; amd. Sec. 1, Ch. 148, L. 1974; Sec. 59-1002, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 131, L. 1949; amd. Sec. 3, Ch. 350, L. 1969; amd. Sec. 3, Ch. 476, L. 1973; Sec. 59-1003, R.C.M. 1947; R.C.M. 1947, 59-1002, 59-1003; amd. Sec. 1, Ch. 548, L. 1979; amd. Sec. 7, Ch. 568, L. 1979.**

2-18-618. Sick leave. (1) Each permanent full-time employee shall earn sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. Sick leave credits shall be credited at the end of each pay period. Sick leave credits shall be earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status exceeding 15 working days.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave shall be computed on the basis of the employee's salary or wage at the time he terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment therefor shall be the responsibility of the agency wherein the sick leave accrues. However, no employee forfeits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same jurisdiction, he shall not be entitled to a lump-sum payment. In such a transfer the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency shall not be credited with any sick leave for which the employee has previously been compensated.

(7) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

History: En. 59-1008 by Sec. 1, Ch. 93, L. 1971; amd. Sec. 5, Ch. 476, L. 1973; amd. Sec. 1, Ch. 309, L. 1975; R.C.M. 1947, 59-1008; amd. Sec. 8, Ch. 568, L. 1979.

2-18-619. Jury duty — service as witness. (1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his juror time off against his annual leave, he shall not be required to remit his juror fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowance paid him by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave, he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

History: En. Sec. 6, Ch. 476, L. 1973; amd. Sec. 1, Ch. 154, L. 1974; R.C.M. 1947, 59-1010; amd. Sec. 9, Ch. 568, L. 1979.

2-18-620. Mandatory leave of absence for employees holding public office — return requirements. (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant such employees leaves of absence, not to exceed 180 days per year, while they are performing public service.

(2) Employees granted a leave shall make arrangements to return to work within 10 days following the completion of the service for which the leave was granted unless they are unable to do so because of illness or disabling injury certified to by a licensed physician.

(3) Any unemployment benefits paid to any person by application of this section shall not be charged against any employer under the unemployment insurance law.

History: En. 59-1011, 59-1012 by Secs. 1, 2, Ch. 107, L. 1975; R.C.M. 1947, 59-1011, 59-1012; amd. Sec. 2, Ch. 57, L. 1979.

2-18-621. Unlawful termination. It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. Should a question arise under this section, it shall be submitted to arbitration as provided in Title 27, chapter 5, unless there is a collective bargaining agreement applicable.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977; R.C.M. 1947, 59-1001(5).

Part 7

Group Insurance Generally

2-18-701. Definitions. In this part, as it applies to a person employed in the executive, judicial, or legislative branches of state government, "employee" means:

(1) a permanent full-time employee defined in 2-18-601;

(2) a part-time permanent employee, as defined in 2-18-601, who is scheduled to work a regular schedule of 20 hours or more a week;

(3) a seasonal employee, as defined in 2-18-601, who is scheduled to work 6 months or more a year;

(4) elected officials;

(5) officers and permanent employees of the legislative branch;

(6) judges and permanent employees of the judicial branch;

(7) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education; and

(8) temporary employees as defined in 2-18-601 who are scheduled to work more than 6 months a year or who work for a continuous period of more than 6 months or whose temporary status is defined through collective bargaining.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(5); amd. Sec. 12, Ch. 678, L. 1979; amd. Sec. 6, Ch. 421, L. 1981.

Compiler's Comments

1981 Amendment: Added "permanent" before "employees" in (5) and (6); added subsection (8) relating to temporary employees.

Effective Date: Section 12(1), Ch. 421, L. 1981, provided: "Sections 1 through 15, excluding section 2, are effective July 11, 1981."

2-18-702. Group insurance for public employees and officers. (1) All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers and employees and their dependents.

(2) State employees and elected officials, as defined in 2-18-701, may participate in such state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue his warrant therefor to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services shall be construed as group insurance and the dues payable under such plans shall be construed as premiums therefor.

History: (1)En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; Sec. 11-1024, R.C.M. 1947; (2)En. Sec. 11, Ch. 555, L. 1979; (3), (4)En. Sec. 1, Ch. 248, L. 1963; Sec. 40-3905.1, R.C.M. 1947; R.C.M. 1947, 11-1024(1), 40-3905.1; amd. Sec. 31, Ch. 184, L. 1979; amd. Sec. 7, Ch. 421, L. 1981.

Compiler's Comments

1981 Amendment: Added "and elected officials" after "State employees" at the beginning of (2); substituted "2-18-701" for "2-18-809" in (2).

Effective Date: Section 12(1), Ch. 421, L. 1981, provided: "Sections 1 through 15, excluding section 2, are effective July 11, 1981."

2-18-703. Contributions. (1) Each agency as defined in 2-18-601 shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701 other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be $70 per month for the fiscal year ending June 30, 1982, and $80 per month for each fiscal year thereafter. Permanent part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee shall be transferred to an account established for this purpose by the department and

upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(2); amd. Sec. 13, Ch. 678, L. 1979; amd. Sec. 8, Ch. 421, L. 1981.

Compiler's Comments

1981 Amendment: Increased employer insurance contribution to $70 and $80 for the first and second year of the biennium from $50 and $60, respectively.

Effective Date: Section 12(1), Ch. 421, L. 1981, provided: "Sections 1 through 15, excluding section 2, are effective July 11, 1981."

2-18-704. Mandatory provisions. (1) An insurance contract or plan issued after June 30, 1977, under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until he becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless he is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless he is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) A person electing to remain a member of the group under subsection (1) must pay the full premium for his coverage and for that of his covered dependents.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(3), (4).

Part 8

State Group Insurance

2-18-801 through 2-18-807. Repealed. Sec. 14, Ch. 555, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

2-18-801. (1)En. by Code Commissioner, 1979; (2), (3)En. Sec. 1, Ch. 438, L. 1973; amd. Sec. 1, Ch. 347, L. 1975; R.C.M. 1947, 59-1501.

2-18-802. En. Sec. 6, Ch. 438, L. 1973; R.C.M. 1947, 59-1506.

2-18-803. En. Sec. 3, Ch. 438, L. 1973; R.C.M. 1947, 59-1503(3).

2-18-804. En. Sec. 4, Ch. 438, L. 1973; R.C.M. 1947, 59-1504.

2-18-805. En. Sec. 7, Ch. 438, L. 1973; R.C.M. 1947, 59-1507.

2-18-806. En. Sec. 2, Ch. 438, L. 1973; R.C.M. 1947, 59-1502.

2-18-807. En. Sec. 5, Ch. 438, L. 1973; R.C.M. 1947, 59-1505.

2-18-808. Purpose. The purpose of this part is to establish a program under which the state may provide state employees with adequate group hospitalization, health, medical, disability, life, and other related group benefits in an efficient manner and at an affordable cost.

History: En. Sec. 1, Ch. 555, L. 1979.

2-18-809. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government. The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system.

(4) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to officers and employees of the state. The term "group benefits" does not include casualty insurance, defined in 33-1-206; marine insurance, authorized in 33-1-209 and 33-1-221 through 33-1-229; property insurance, defined in 33-1-210; surety insurance, defined in 33-1-211; and title insurance, defined in 33-1-212.

History: En. Sec. 2, Ch. 555, L. 1979; amd. Sec. 10, Ch. 467, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "authorized in 33-1-209 and 33-1-221 through 33-1-229" for "defined in 33-1-209".

2-18-810. Functions of advisory council. (1) The department shall meet and consult with the advisory council before negotiating, contracting, or otherwise modifying state employee group benefit plans.

(2) The advisory council shall meet quarterly to review the existing state employee group benefit plans, to review claims problems, and to advise the department on state employee group benefit matters.

History: En. Sec. 4, Ch. 555, L. 1979.

2-18-811. General duties of the department. The department shall:

(1) adopt rules for the conduct of its business under this part and to carry out the purposes of this part;

(2) negotiate and administer contracts for state employee group benefit plans;

(3) design state employee group benefit plans, establish specifications for bids, and make recommendations for acceptance or rejection of bids;

(4) prepare an annual report which describes the state employee group benefit plans being administered, details the historical and projected program

costs and the status of reserve funds, and makes recommendations, if any, for change in existing state employee group benefit plans; and

(5) prior to each legislative session, perform or obtain an analysis of rate adequacy of all state employee group benefit plans administered under this part. The department shall make copies of the report available to the legislature.

History: En. Sec. 5, Ch. 555, L. 1979.

2-18-812. Alternatives to conventional insurance for providing state employee group benefits authorized — requirements. The department may establish alternatives to conventional insurance for providing state employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department must maintain state employee group benefit plans on an actuarially sound basis.

(2) The department must maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee group benefit plans.

(3) The department must deposit all reserve funds and premiums paid to a state employee group benefit plan.

(4) The department must deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) of this section in order to offset the costs of administering the plan.

(5) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance. The department may not implement any full self insurance alternative prior to July 1, 1981.

(6) The provisions of Title 33 shall not apply to the department when exercising the powers and duties provided for in this section.

History: En. Sec. 6, Ch. 555, L. 1979.

2-18-813. Combining existing employee groups authorized. The department may combine existing state employee groups into larger groups for the purpose of establishing state employee group benefit plans on behalf of the combined groups. The department may also combine state employees into a single group for purposes of state employee group benefits under this part.

History: En. Sec. 7, Ch. 555, L. 1979.

2-18-814. Administrative costs. The department shall include the costs of administering and negotiating state employee group benefit plans established under this part, as well as the costs of hiring necessary consultants, actuaries, and auditors under this part, as part of the cost for state employee group benefits.

History: En. Sec. 8, Ch. 555, L. 1979.

2-18-815. Transfer of authority of board of regents authorized. (1) The board of regents of higher education may transfer its authority for providing group benefits for employees of the Montana university system to the department.

(2) Upon transfer of the board of regents' authority as provided in (1) of this section, group benefit plans for employees of the Montana university system are subject to the provisions of this part.

History: En. Sec. 9, Ch. 555, L. 1979.

2-18-816. Annual audits of group benefit plans required. The department shall have the state employee group benefit plans established under this part, whether established on a self-funded basis or not, audited annually by either the legislative auditor or an independent certified public accountant.

History: En. Sec. 10, Ch. 555, L. 1979.

Part 9 reserved

Part 10

Grievance Procedures

2-18-1001. Highway department personnel grievances — hearing. (1) An employee of the department of highways aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action and who has exhausted all other administrative remedies is entitled to a hearing before the board of personnel appeals, under the provisions of a grievance procedure to be prescribed by the board, for resolution of the grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department of highways against an aggrieved employee because the employee has filed or attempted to file a grievance with the board shall also be basis for a grievance and shall entitle the employee to a hearing before the board for resolution.

History: En. 32-2505.1 by Sec. 1, Ch. 377, L. 1975; Sec. 32-2505.1, R.C.M. 1947; En. 32-2505 by Sec. 2, Ch. 28, L. 1974; Sec. 32-2505, R.C.M. 1947; R.C.M. 1947, 32-2505(part), 32-2505.1.

2-18-1002. Grievance procedure — hearing — order. (1) The board of personnel appeals provided for in 2-15-1705 shall hear grievances of personnel of the department of highways.

(2) If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the department of highways requiring such action of the department as will resolve the employee's grievance. In any hearing the board is not bound by statutory or common-law rules of evidence.

History: (1)En. 32-2505 by Sec. 2, Ch. 28, L. 1974; Sec. 32-2505, R.C.M. 1947; (2)En. 32-2505.2 by Sec. 2, Ch. 377, L. 1975; Sec. 32-2505.2, R.C.M. 1947; R.C.M. 1947, 32-2505(part), 32-2505.2.

2-18-1003. Enforcement of board order — petition in district court. The board or the aggrieved employee may petition for the enforcement of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

History: **En. 32-2505.3 by Sec. 3, Ch. 377, L. 1975; R.C.M. 1947, 32-2505.3.**

2-18-1004 through 2-18-1010 reserved.

2-18-1011. Classification or compensation grievance — retaliation — hearing on complaint. (1) An employee or his representative affected by the operation of parts 1 through 3 of this chapter is entitled to file a complaint with the board of personnel appeals provided for in 2-15-1705 and to be heard under the provisions of a grievance procedure to be prescribed by the board.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a complaint with the board shall also be basis for a complaint and shall entitle the employee to file a complaint with the board and to be heard under the provisions of the grievance procedure prescribed by the board.

(3) An action attempting to revise the class specifications of or series of class specifications involving an employee exercising a right conferred by 2-18-1011 through 2-18-1013 in a way which would adversely affect the employee prior to final resolution or entry of a final order with respect thereto is presumed to be an interference, restraint, coercion, or retaliation prohibited by subsection (2) of this section unless such review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable.

History: **En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(part); amd. Sec. 14, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "personnel" for "personal" in (1).

2-18-1012. Grievance procedure. If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate agency or agencies of state government requiring such action as will resolve the employee's grievance. In any hearing the board is not bound by statutory or common-law rules of evidence.

History: **En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(part).**

2-18-1013. Enforcement of board order — petition to district court. The board or the employee may petition for the enforcement of the board's order and for appropriate temporary relief and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977; R.C.M. 1947, 82A-1014(4)(d).

Part 11

Employee Incentive Program

Part Compiler's Comment

Termination Date: Section 7, Ch. 552, L. 1981, provided: "All provisions of this act shall terminate on July 1, 1983."

2-18-1101. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or an agency of the Montana university system.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Employee" means an employee of the executive, legislative, or judicial branch or the Montana university system.

History: En. Sec. 1, Ch. 552, L. 1981.

2-18-1102. *(Temporary)* **Creation of program.** The department shall develop and administer a statewide employee incentive award program to appropriately recognize and monetarily reward state employees in a timely manner for suggestions or inventions that contribute to the efficiency, economy, or other improvement of state government by reducing the costs of governmental operations.

History: En. Sec. 2, Ch. 552, L. 1981.

2-18-1103. *(Temporary)* **Powers and duties of the department.** The department shall:

(1) adopt rules to equitably administer the employee incentive award program;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first-year monetary savings;

(5) hear appeals from employees on the operation of the program; and

(6) prepare a biennial report to the legislature containing a list of incentive awards and the corresponding savings to the state resulting from each employee's suggestion or invention and providing a general review of and recommendations for improving the program.

History: **En. Sec. 3, Ch. 552, L. 1981.**

Compiler's Comments

Statement of Intent: The statement of intent for HB 161 (Ch. 552, L. 1981) read: "The general purpose of H.B. 161 is to provide incentives to state employees to make suggestions or to create inventions that reduce the costs of government operations or improve government operations without increasing costs. The discretion of the Department of Administration in granting awards is limited to 10% of the cost savings realized in the first year, or $500, whichever is less. Larger awards may be proposed but the Legislature must approve the awards and appropriate the money.

The purpose for giving the Department of Administration rulemaking authority is that it can best administer the program consistently throughout state government and determine the amount of money appropriate for an incentive award.

It is contemplated that the rules should address the following:

(1) the composition of the Advisory Council created by the bill;

(2) the procedures and bylaws that the Advisory Council will follow when conducting its business;

(3) providing model suggestion systems for agencies to use when administering the incentive program;

(4) standards to assure administration of the program on a statewide basis;

(5) forms that may be necessary to administer the provisions in the bill;

(6) procedures for detailed investigations and evaluations of suggestions;

(7) procedures for filing suggestions with the Department;

(8) procedures for the review of employee concerns regarding the fair administration of the program;

(9) time limits for the review of suggestions and inventions;

(10) procedures for the presentation of suggestions or inventions to the Legislature when the legitimate value of the ideas exceeds the $500 limit in the bill;

(11) procedures covering the timely payment of cash awards that are approved by the Department;

(12) procedures to maintain the integrity of the program through the review of awards to assure that they are granted equitably, on the basis of merit, and that the reasons for granting an award are made public. All provisions of this act shall expire and terminate on July 1, 1983."

2-18-1104. *(Temporary)* **Appointment and functions of advisory council.** (1) The department shall appoint an incentive awards advisory council under 2-15-122. Members of the advisory council must be selected from a diverse group to adequately represent employees.

(2) The advisory council shall meet regularly and consult with the department to review all proposed incentive awards and to recommend granting or rejecting these awards.

History: **En. Sec. 4, Ch. 552, L. 1981.**

2-18-1105. *(Temporary)* **Eligibility for award.** (1) Except as provided in subsection (2), an employee may be eligible for an incentive award if his suggestion or invention results in:

(a) eliminating or reducing an agency's expenditures; or

(b) improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations.

(2) (a) An employee may not be eligible for an incentive award if his suggestion or invention directly relates to his assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the department.

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research.

History: En. Sec. 5, Ch. 552, L. 1981.

2-18-1106. *(Temporary)* **Agency head to grant award — amount and source of award.** (1) After an agency implements an employee's suggestion or invention and the monetary savings to the state is estimated, an agency head, upon written application to and approval from the department and the incentive awards advisory council, may grant an incentive award to an employee whose proposal meets the requirements enumerated in 2-18-1105.

(2) The incentive award may not be more than 10% of the savings resulting from implementing the employee's proposal for 1 year up to a maximum of $500. Larger awards may be proposed and submitted to the legislature for consideration.

(3) The agency head shall pay the employee from the agency's budget in a single, lump-sum award. This award is in addition to the recipient's regular compensation.

History: En. Sec. 6, Ch. 552, L. 1981.

CHAPTER 19

TERMINATION OF STATE AGENCIES

Part 1 — Procedure

Section
2-19-101. Definitions.
2-19-102. Closing out defunct state agencies — procedures.

Part 1

Procedure

2-19-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of administration created in 2-15-1001.

(2) "State agency" means any state office, board, bureau, commission, department, or agency but does not include any agency operated by a city, town, county, school district, or other political subdivision.

History: En Sec. 1, Ch. 333, L. 1979.

2-19-102. Closing out defunct state agencies — procedures. Unless otherwise provided by law, the following procedures apply whenever a state agency is terminated by operation of law, is abolished by executive or legislative action, ceases to function, or otherwise becomes defunct:

(1) The department becomes the receiver of all real and personal property of the agency, including all books, records, and accounts, and shall determine all remaining assets and liabilities of the defunct agency. The department shall inventory all personal property of the agency and may reassign the property to other state agencies or otherwise dispose of it as provided in Title 18, chapter 6, part 1.

(2) The department must pay any creditors of the defunct state agency from the funds remaining in the agency's current budget. However, if insufficient funds remain to settle all outstanding accounts, then the department shall prorate all claims in the ratio of their amount to the total cash available. The department shall seek a supplemental appropriation from the next regular session of the legislature to pay the remaining balance of the creditors' claims. Any funds remaining after payment to all creditors of the defunct agency must be deposited by the department into the general fund.

History: En Sec. 2, Ch. 333, L. 1979.

TITLE 3

JUDICIARY, COURTS

Ch.
1. Courts and Judicial Officers Generally.
2. Supreme Court.
Chapters 3 and 4 reserved.
5. District Courts.
6. Municipal Courts.
7. Water Courts.
Chapters 8 and 9 reserved.
10. Justices' Courts.
11. City Courts.
12. Small Claims Courts.
Chapters 13 and 14 reserved.
15. Juries and Jurors.

CHAPTER 1

COURTS AND JUDICIAL OFFICERS GENERALLY

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3-1-102. Courts of record.
Sections 3-1-103 through 3-1-110 reserved.
3-1-111. Powers respecting conduct of business.
3-1-112. Rules for courts of record.
3-1-113. Means to carry jurisdiction into effect.

Part 2 — Seals of Courts

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3-1-202. Seal of supreme court.
3-1-203. Seals of district courts.
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Part 3 — General Rules Regarding Procedure

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3-1-521. Proceedings when party fails to appear.
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Part 6 — Restrictions on Judicial Officers

3-1-601. Certain officers not to practice law or administer estates.
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3-1-606. Justice of the peace or constable not to purchase judgment.
3-1-607. Supreme court justice or district court judge not to run for office — resignation required.
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Part 7 — Court Administrator

3-1-701. Office of court administrator — appointment and term of office.
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Part 10 — Judicial Nomination Commission

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3-1-1011. Governor to appoint from list.
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Part 11 — Judicial Standards Commission

3-1-1101. Creation and composition of commission.
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3-1-1110. Procedure when convicted of crime.
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3-1-1125. Efficiency and effectiveness — audit authorized.
3-1-1126. Commission report to legislature.

Part 1

Courts — Definitions and General Powers

3-1-101. The several courts of this state. The following are courts of justice of this state:

(1) the court of impeachment, which is the senate;
(2) the supreme court;
(3) the district courts;
(4) the municipal courts;
(5) the justices' courts;
(6) the city courts and such other courts of limited jurisdiction as the legislature may establish in any incorporated city or town.

History: En. Secs. 2, 6, C. Civ. Proc. 1895; re-en. Secs. 6238, 6240, Rev. C. 1907; re-en. Secs. 8784, 8786, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 33, 36; re-en. Secs. 8784, 8786, R.C.M. 1935; R.C.M. 1947, 93-101, 93-103(part); amd. Sec. 1, Ch. 21, L. 1979; amd. Sec. 5, Ch. 466, L. 1979.

3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, and the municipal courts are courts of record.

History: En. Sec. 3, C. Civ. Proc. 1895; re-en. Sec. 6239, Rev. C. 1907; re-en. Sec. 8785, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 34; re-en. Sec. 8785, R.C.M. 1935; amd. Sec. 11, Ch. 429, L. 1977; R.C.M. 1947, 93-102.

3-1-103 through 3-1-110 reserved.

3-1-111. Powers respecting conduct of business. Every court has power to:

(1) preserve and enforce order in its immediate presence;

(2) enforce order in the proceedings before it or before a person or persons empowered to conduct a judicial investigation under its authority;

(3) provide for the orderly conduct of proceedings before it or its officers;

(4) compel obedience to its judgments, orders, and process and to the orders of a judge out of court in an action or proceeding pending therein;

(5) control, in furtherance of justice, the conduct of its ministerial officers and of all other persons in any manner connected with a judicial proceeding before it in every other matter appertaining thereto;

(6) compel the attendance of persons to testify in an action or proceeding pending therein in the cases and manner provided in this code;

(7) administer oaths in an action or proceeding pending therein and in all other cases where it may be necessary in the exercise of its powers and duties;

(8) amend and control its process and orders so as to make them conformable to law and justice.

History: En. Sec. 452, p. 134, Bannack Stat.; re-en. Sec. 609, p. 159, Cod. Stat. 1871; re-en. Sec. 529, p. 178, L. 1877; re-en. Sec. 529, 1st Div. Rev. Stat. 1879; re-en. Sec. 546, 1st Div. Comp. Stat. 1887; amd. Sec. 110, C. Civ. Proc. 1895; re-en. Sec. 6292, Rev. C. 1907; re-en. Sec. 8844, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 128; re-en. Sec. 8844, R.C.M. 1935; R.C.M. 1947, 93-501.

3-1-112. Rules for courts of record. (1) Every court of record may make rules, not inconsistent with the laws of this state, for its own government and the government of its officers. Such rules must not impose any tax or charge upon any legal proceedings or give any allowance to any officers for services.

(2) In case of the failure or refusal of any district court to adopt and promulgate rules of court, the supreme court may, upon the application of any interested person, adopt and promulgate rules for the government of such court. When adopted and promulgated, such rules shall remain in full force and effect until modified or repealed by the authority adopting them.

(3) Rules adopted by any court take effect 30 days after their publication.

(4) Any judge who shall fail or refuse to comply with and carry out in good faith the rules of court adopted by the supreme court, as herein provided for, shall be guilty of a contempt of the supreme court.

History: Ap. p. Sec. 111, C. Civ. Proc. 1895; re-en. Sec. 6293, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1915; re-en. Sec. 8845, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 129; re-en. Sec. 8845, R.C.M. 1935; Sec. 93-502, R.C.M. 1947; Ap. p. Sec. 112, C. Civ. Proc. 1895; re-en. Sec. 6294, Rev. C. 1907; re-en. Sec. 8846, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 130; re-en. Sec. 8846, R.C.M. 1935; Sec. 93-503, R.C.M. 1947; R.C.M. 1947, 93-502, 93-503.

3-1-113. Means to carry jurisdiction into effect. When jurisdiction is, by the constitution or any statute, conferred on a court or judicial officer, all the means necessary for the exercise of such jurisdiction are also given. In the exercise of this jurisdiction, if the course of proceeding is not specifically pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

History: En. Sec. 205, C. Civ. Proc. 1895; re-en. Sec. 6329, Rev. C. 1907; re-en. Sec. 8882, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 187; re-en. Sec. 8882, R.C.M. 1935; R.C.M. 1947, 93-1106; amd. Sec. 2, Ch. 21, L. 1979.

Part 2

Seals of Courts

3-1-201. What courts have seals. Each of the following courts shall have a seal:

(1) the supreme court;
(2) the district courts;
(3) the municipal courts.

History: En. Sec. 462, p. 135, Bannack Stat. re-en. Sec. 585, p. 155, Cod. Stat. 1871; re-en. Sec. 510, p. 174, L. 1877; re-en. Sec. 510, 1st Div. Rev. Stat. 1879; re-en. Sec. 527, 1st Div. Comp. Stat. 1887; amd. Sec. 150, C. Civ. Proc. 1895; re-en. Sec. 6303, Rev. C. 1907; re-en. Sec. 8857, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 147; re-en. Sec. 8857, R.C.M. 1935; R.C.M. 1947, 93-601; amd. Sec. 3, Ch. 21, L. 1979.

3-1-202. Seal of supreme court. The seal of the supreme court is circular in form and not less than 1 ¾ inches in diameter, on which are engraved the words "Supreme Court, State of Montana", with the word "Seal" in the center thereof, which seal must be procured by the clerk of the supreme court at the expense of the state; and an impression thereof, certified to by the clerk, must be filed with the secretary of state.

History: En. Sec. 1, p. 206, L. 1891; re-en. Sec. 151, C. Civ. Proc. 1895; re-en. Sec. 6304, Rev. C. 1907; re-en. Sec. 8858, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 148; re-en. Sec. 8858, R.C.M. 1935; R.C.M. 1947, 93-602.

3-1-203. Seals of district courts. The seals of the district courts are circular, not less than 1 ¾ inches in diameter, and have in the center the word "Seal" and the following inscription surrounding the same: ".... District Court, ... County, Montana", inserting the number of the district and the name of the county; which seal must be procured by the clerk of the court at the expense of the county and an impression thereof, certified by the clerk, filed with the secretary of state.

History: En. Sec. 2, p. 206, L. 1891; re-en. Sec. 152, C. Civ. Proc. 1895; re-en. Sec. 6305, Rev. C. 1907; re-en. Sec. 8859, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 149; re-en. Sec. 8859, R.C.M. 1935; R.C.M. 1947, 93-603.

3-1-204. Clerk of court to keep seal. The clerk of the court must keep the seal thereof.

History: En. Sec. 153, C. Civ. Proc. 1895; re-en. Sec. 6306, Rev. C. 1907; re-en. Sec. 8860, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 152; re-en. Sec. 8860, R.C.M. 1935; R.C.M. 1947, 93-604.

3-1-205. Seal of municipal court. The municipal court shall have and use a seal, which seal shall be similar to the seal of the district court, except as to the name of the court.

History: En. Sec. 6, Ch. 177, L. 1935; re-en. Sec. 5094.6, R.C.M. 1935; R.C.M. 1947, 11-1706(part).

3-1-206. Documents requiring seals. Unless otherwise specifically required, the seal of a court need not be affixed to any proceeding therein or document except to:

(1) a writ;

(2) the certificate of probate of a will or of the appointment of a personal representative or guardian;

(3) the authentication of a copy of a record or other proceeding of a court or an officer thereof or of a copy of a document on file in the office of the clerk.

History: En. Sec. 464, p. 135, Bannack Stat.; repealed Sec. 751, p. 187, Cod. Stat. 1871; en. Sec. 154, C. Civ. Proc. 1895; re-en. Sec. 6307, Rev. C. 1907; re-en. Sec. 8861, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 153; re-en. Sec. 8861, R.C.M. 1935; R.C.M. 1947, 93-605; amd. Sec. 15, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "Unless otherwise specifically required" at the beginning of the section; substituted "a personal representative" for "an executor, administrator" in (2).

Part 3

General Rules Regarding Procedure

3-1-301. Days on which courts may be held. Courts of justice may be held and judicial business transacted on any day, except as provided in 3-1-302.

History: En. Sec. 466, p. 136, Bannack Stat.; re-en. Sec. 588, p. 155, Cod. Stat. 1871; re-en. Sec. 513, p. 174, L. 1877; re-en. Sec. 513, 1st Div. Rev. Stat. 1879; re-en. Sec. 530, 1st Div. Comp. Stat. 1887; re-en. Sec. 120, C. Civ. Proc. 1895; re-en. Sec. 6295, Rev. C. 1907; re-en. Sec. 8849, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 133; re-en. Sec. 8849, R.C.M. 1935; R.C.M. 1947, 93-506.

3-1-302. Nonjudicial day. (1) No court may be open nor may any judicial business be transacted on legal holidays, as provided for in 1-1-216, and on a day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving, or holiday, except for the following purposes:

(a) to give, upon its request, instructions to a jury when deliberating on its verdict;

(b) to receive a verdict or discharge a jury;

(c) for the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature.

(2) Injunctions, writs of prohibition, and habeas corpus may be issued and served on any day.

History: En. Sec. 467, p. 136, Bannack Stat.; re-en. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec. 121, C. Civ. Proc. 1895; re-en. Sec. 6296, Rev. C. 1907; re-en. Sec. 8850, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 134; re-en. Sec. 8850, R.C.M. 1935; amd. Sec. 14, Ch. 420, L. 1975; amd. Sec. 28, Ch. 344, L. 1977; R.C.M. 1947, 93-507.

3-1-303. Adjournments from nonjudicial days. If any day mentioned in 3-1-302 happens to be the day appointed for the holding or sitting of a court or to which it is adjourned, it must be considered appointed for or adjourned to the next day.

History: En. Sec. 467, p. 136, Bannack Stat.; amd. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat.

1887; amd. Sec. 122, C. Civ. Proc. 1895; re-en. Sec. 6297, Rev. C. 1907; re-en. Sec. 8851, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 135; re-en. Sec. 8851, R.C.M. 1935; R.C.M. 1947, 93-508.

3-1-304. Adjournment for absence of judge. If no judge attends before noon on the day appointed for the holding or sitting of a court or on a day to which it may have been adjourned, the sheriff or clerk may adjourn the same until the next day at 10 a.m. If no judge attends on that day before noon, the sheriff or clerk may adjourn the same until the following day at the same hour and so on from day to day for 6 days unless the judge, by written order or telegram, directs it to be adjourned to some day certain, fixed in said order or telegram, in which case it must be so adjourned.

History: En. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec. 130, C. Civ. Proc. 1895; re-en. Sec. 6298, Rev. C. 1907; re-en. Sec. 8852, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 139; re-en. Sec. 8852, R.C.M. 1935; R.C.M. 1947, 93-509.

3-1-305. Adjournment until next regular term. If no judge attends for 6 days and no written order or telegram be made or sent as provided in 3-1-304, the sheriff or clerk must adjourn the term until the time appointed for the holding of the next regular term.

History: En. Sec. 589, p. 155, Cod. Stat. 1871; re-en. Sec. 514, p. 174, L. 1877; re-en. Sec. 514, 1st Div. Rev. Stat. 1879; re-en. Sec. 531, 1st Div. Comp. Stat. 1887; amd. Sec. 131, C. Civ. Proc. 1895; re-en. Sec. 6299, Rev. C. 1907; re-en. Sec. 8853, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 140; re-en. Sec. 8853, R.C.M. 1935; R.C.M. 1947, 93-510.

3-1-306 through 3-1-310 reserved.

3-1-311. Proceedings not affected by vacancy in office. No proceeding in any court of justice in an action or special proceeding pending therein is affected by a vacancy in the office of all or any of the judges thereof.

History: En. Sec. 460, p. 135, Bannack Stat.; re-en. Sec. 583, p. 155, Cod. Stat. 1871; re-en. Sec. 508, p. 174, L. 1877; re-en. Sec. 508, 1st Div. Rev. Stat. 1879; re-en. Sec. 525, 1st Div. Comp. Stat. 1887; amd. Sec. 202, C. Civ. Proc. 1895; re-en. Sec. 6326, Rev. C. 1907; re-en. Sec. 8879, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 184; re-en. Sec. 8879, R.C.M. 1935; R.C.M. 1947, 93-1103.

3-1-312. Sittings of court to be public. The sittings of every court of justice must be public, except as provided in 3-1-313.

History: En. Sec. 450, p. 134, Bannack Stat.; re-en. Sec. 607, p. 159, Cod. Stat. 1871; re-en. Sec. 527, p. 178, L. 1877; re-en. Sec. 527, 1st Div. Rev. Stat. 1879; re-en. Sec. 544, 1st Div. Comp. Stat. 1887; re-en. Sec. 100, C. Civ. Proc. 1895; re-en. Sec. 6290, Rev. C. 1907; re-en. Sec. 8847, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 124; re-en. Sec. 8847, R.C.M. 1935; R.C.M. 1947, 93-504.

3-1-313. Sittings of court — when private. (1) In an action for dissolution of marriage, criminal conversation, or seduction, the court may direct the trial of any issue of fact joined therein to be private and exclude all persons except the officers of the court, the parties, their witnesses, and counsel.

(2) During the examination of a witness in any cause, the court may, in its discretion, exclude some or all of the other witnesses in the cause.

History: En. Sec. 451, p. 134, Bannack Stat.; re-en. Sec. 608, p. 159, Cod. Stat. 1871; re-en. Sec. 528, p. 178, L. 1877; re-en. Sec. 528, 1st Div. Rev. Stat. 1879; re-en. Sec. 545, 1st Div. Comp. Stat. 1887; amd. Sec. 101, C. Civ. Proc. 1895; re-en. Sec. 6291, Rev. C. 1907; re-en. Sec. 8848, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 125; re-en. Sec. 8848, R.C.M. 1935; amd. Sec. 23, Ch. 33, L. 1977; amd. Sec. 27, Ch. 344, L. 1977; R.C.M. 1947, 93-505.

3-1-314. Proceedings to be in English language. Every written proceeding in a court of justice in this state must be in the English language, and judicial proceedings must be conducted, preserved, and published in no other.

History: En. Sec. 461, p. 135, Bannack Stat.; re-en. Sec. 584, p. 155, Cod. Stat. 1871; re-en. Sec. 509, p. 174, L. 1877; re-en. Sec. 509, 1st Div. Rev. Stat. 1879; re-en. Sec. 526, 1st Div. Comp. Stat. 1887; amd. Sec. 203, C. Civ. Proc. 1895; re-en. Sec. 6327, Rev. C. 1907; re-en. Sec. 8880, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 185; re-en. Sec. 8880, R.C.M. 1935; R.C.M. 1947, 93-1104.

3-1-315. Abbreviations and figures. Such abbreviations as are in common use may be used, and numbers may be expressed by figures or numerals in the customary manner.

History: En. Sec. 461, p. 135, Bannack Stat.; re-en. Sec. 584, p. 155, Cod. Stat. 1871; re-en. Sec. 509, p. 174, L. 1877; re-en. Sec. 509, 1st Div. Rev. Stat. 1879; re-en. Sec. 526, 1st Div. Comp. Stat. 1887; amd. Sec. 204, C. Civ. Proc. 1895; re-en. Sec. 6328, Rev. C. 1907; re-en. Sec. 8881, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 186; re-en. Sec. 8881, R.C.M. 1935; R.C.M. 1947, 93-1105.

3-1-316. Repealed. Sec. 13, Ch. 245, L. 1979.

History: En. 93-514 by Sec. 1, Ch. 272, L. 1975; R.C.M. 1947, 93-514.

Part 4

Powers of Judicial Officers

3-1-401. Powers of judges out of court. A justice or judge may exercise out of court all the powers expressly conferred upon a justice or judge, as contradistinguished from the court.

History: En. Sec. 190, C. Civ. Proc. 1895; re-en. Sec. 6319, Rev. C. 1907; re-en. Sec. 8872, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 176; re-en. Sec. 8872, R.C.M. 1935; R.C.M. 1947, 93-1001.

3-1-402. Powers of judicial officers as to conduct of proceedings. Every judicial officer has power to:

(1) preserve and enforce order in his immediate presence and in proceedings before him when he is engaged in the performance of official duty;

(2) compel obedience to his official orders, as provided in this code;

(3) compel the attendance of persons to testify in a proceeding before him in the cases and manner provided in this code;

(4) administer oaths to persons in a proceeding pending before him and in all other cases where it may be necessary in the exercise of his powers and duties.

History: En. Sec. 191, C. Civ. Proc. 1895; re-en. Sec. 6320, Rev. C. 1907; re-en. Sec. 8873, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 177; re-en. Sec. 8873, R.C.M. 1935; R.C.M. 1947, 93-1002.

3-1-403. Power to punish for contempt. For the effectual exercise of the powers conferred by 3-1-402, a judicial officer may punish for contempt in the cases provided in this code.

History: En. Sec. 192, C. Civ. Proc. 1895; re-en. Sec. 6321, Rev. C. 1907; re-en. Sec. 8874, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 178; re-en. Sec. 8874, R.C.M. 1935; R.C.M. 1947, 93-1003.

3-1-404. Taking acknowledgments and affidavits. Each of the justices of the supreme court and judges of the district courts has power in any part of the state, and every justice of the peace within his county, to take and certify:

(1) the proof and acknowledgment of a conveyance of real property or of any other written instrument;
(2) the acknowledgment of satisfaction of a judgment of any court;
(3) an affidavit or deposition to be used in this state.

History: En. Sec. 459, Bannack Stat.; re-en. Sec. 582, p. 155, Cod. Stat. 1871; re-en. Sec. 507, p. 174, L. 1877; re-en. Sec. 507, 1st Div. Rev. Stat. 1879; re-en. Sec. 524, 1st Div. Comp. Stat. 1887; amd. Sec. 193, C. Civ. Proc. 1895; re-en. Sec. 6322, Rev. C. 1907; re-en. Sec. 8875, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 179; re-en. Sec. 8875, R.C.M. 1935; R.C.M. 1947, 93-1004.

3-1-405. Certificate of authenticity of justice's court's certificate of acknowledgment. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate, under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine.

History: En. Sec. 194, C. Civ. Proc. 1895; re-en. Sec. 6323, Rev. C. 1907; re-en. Sec. 8876, R.C.M. 1921; re-en. Sec. 8876, R.C.M. 1935; R.C.M. 1947, 93-1005.

Part 5

Contempts

3-1-501. What acts or omissions are contempts. (1) The following acts or omissions in respect to a court of justice or proceedings therein are contempts of the authority of the court:
(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;
(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;
(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;
(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;
(e) disobedience of any lawful judgment, order, or process of the court;
(f) assuming to be an officer, attorney, or counsel of a court and acting as such without authority;
(g) rescuing any person or property in the custody of an officer by virtue of an order or process of such court;
(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;
(i) any other unlawful interference with the process or proceedings of a court;
(j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;
(k) when summoned as a juror in a court, neglecting to attend or serve as such or improperly conversing with a party to an action to be tried at such

court or with any other person in relation to the merits of such action or receiving a communication from a party or other person in respect to it without immediately disclosing the same to the court;

(l) disobedience by an inferior tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer.

(2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

History: En. Sec. 396, p. 125, Bannack Stat.; re-en. Sec. 455, p. 226, L. 1867; re-en. Sec. 531, p. 144, Cod. Stat. 1871; en. Sec. 566, p. 185, L. 1877; re-en. Sec. 566, 1st Div. Rev. Stat. 1879; re-en. Sec. 584, 1st Div. Comp. Stat. 1887; re-en. Sec. 2170, C. Civ. Proc. 1895; re-en. Sec. 7309, Rev. C. 1907; re-en. Sec. 9908, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1209; re-en. Sec. 9908, R.C.M. 1935; R.C.M. 1947, 93-9801.

3-1-502. Order refused — subsequent applications prohibited. (1) If an application for an order, made to a judge of a court in which the action or proceeding is pending, is refused in whole or in part or is granted conditionally, no subsequent application for the same order shall be made to any other judge, except of a higher court.

(2) Nothing in this section refers to motions refused for informality in the papers or proceedings necessary to obtain the order or to motions refused with liberty to renew the same.

History: En. Sec. 457, p. 135, Bannack Stat.; re-en. Sec. 614, p. 159, Cod. Stat. 1871; re-en. Sec. 534, p. 179, L. 1877; re-en. Sec. 534, 1st Div. Rev. Stat. 1879; re-en. Sec. 551, 1st Div. Comp. Stat. 1887; amd. Sec. 200, C. Civ. Proc. 1895; re-en. Sec. 6324, Rev. C. 1907; re-en. Sec. 8877, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 182; re-en. Sec. 8877, R.C.M. 1935; R.C.M. 1947, 93-1101.

3-1-503. Effect of violation. A violation of 3-1-502 may be punished as a contempt. An order made contrary thereto may be revoked by the judge who made it or vacated by a judge of the court in which the action or proceeding is pending.

History: En. Sec. 458, p. 135, Bannack Stat.; re-en. Sec. 615, p. 159, Cod. Stat. 1871; re-en. Sec. 535, p. 179, L. 1877; re-en. Sec. 535, 1st Div. Rev. Stat. 1879; re-en. Sec. 552, 1st Div. Comp. Stat. 1887; amd. Sec. 201, C. Civ. Proc. 1895; re-en. Sec. 6325, Rev. C. 1907; re-en. Sec. 8878, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 183; re-en. Sec. 8878, R.C.M. 1935; R.C.M. 1947, 93-1102.

3-1-504. Reentry on property after eviction. Every person dispossessed of or ejected from or out of any real property by the judgment or process of any court of competent jurisdiction and who, not having right so to do, reenters into or upon or takes possession of any such real property or induces or procures any person not having a right so to do or aids or abets him therein is guilty of a contempt of the court by which such judgment was rendered or from which such process issued. Upon conviction for such contempt, the court or justice of the peace must immediately issue an alias process directed to the proper officer and requiring him to restore the party entitled to the possession of such property, under the original judgment or process, to such possession.

History: En. Sec. 567, p. 186, L. 1877; re-en. Sec. 567, 1st Div. Rev. Stat. 1879; re-en. Sec. 585, 1st Div. Comp. Stat. 1887; re-en. Sec. 2171, C. Civ. Proc. 1895; re-en. Sec. 7310, Rev. C. 1907; re-en. Sec. 9909, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1210; re-en. Sec. 9909, R.C.M. 1935; R.C.M. 1947, 93-9802.

3-1-505 through 3-1-510 reserved.

3-1-511. Procedure — contempt committed in the presence of the court. When a contempt is committed in the immediate view and presence of the court or judge at chambers, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence and adjudging that the person proceeded against is thereby guilty of a contempt and that he be punished as therein prescribed.

History: En. Sec. 397, p. 125, Bannack Stat.; en. Sec. 456, p. 226, L. 1867; re-en. Sec. 532, p. 145, Cod. Stat. 1871; re-en. Sec. 568, p. 186, L. 1877; re-en. Sec. 568, 1st Div. Rev. Stat. 1879; re-en. Sec. 586, 1st Div. Comp. Stat. 1887; amd. Sec. 2172, C. Civ. Proc. 1895; re-en. Sec. 7311, Rev. C. 1907; re-en. Sec. 9910, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1211; re-en. Sec. 9910, R.C.M. 1935; R.C.M. 1947, 93-9803(part).

3-1-512. Procedure — contempt not in presence of the court. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit of the facts constituting the contempt or a statement of the facts by the referees or arbitrators or other judicial officer shall be presented to the court or judge.

History: En. Sec. 397, p. 125, Bannack Stat.; en. Sec. 456, p. 226, L. 1867; re-en. Sec. 532, p. 145, Cod. Stat. 1871; re-en. Sec. 568, p. 186, L. 1877; re-en. Sec. 568, 1st Div. Rev. Stat. 1879; re-en. Sec. 586, 1st Div. Comp. Stat. 1887; amd. Sec. 2172, C. Civ. Proc. 1895; re-en. Sec. 7311, Rev. C. 1907; re-en. Sec. 9910, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1211; re-en. Sec. 9910, R.C.M. 1935; R.C.M. 1947, 93-9803(part).

3-1-513. Warrant of attachment or commitment. When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer or, without a previous arrest, a warrant of commitment may, upon notice or upon an order to show cause, be granted. No warrant of commitment can be issued without such previous attachment to answer or notice or order to show cause.

History: En. Sec. 457, p. 226, L. 1867; re-en. Sec. 533, p. 145, Cod. Stat. 1871; re-en. Sec. 568, p. 186, L. 1877; re-en. Sec. 568, 1st Div. Rev. Stat. 1879; re-en. Sec. 586, 1st Div. Comp. Stat. 1887; re-en. Sec. 2173, C. Civ. Proc. 1895; re-en. Sec. 7312, Rev. C. 1907; re-en. Sec. 9911, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1212; re-en. Sec. 9911, R.C.M. 1935; R.C.M. 1947, 93-9804.

3-1-514. Endorsement allowing bail on warrant. Whenever a warrant of attachment is issued pursuant to this part, the court or judge must direct, by an endorsement on such warrant, that the person charged may be left to bail for his appearance in an amount to be specified in such endorsement.

History: En. Sec. 458, p. 226, L. 1867; re-en. Sec. 534, p. 145, Cod. Stat. 1871; re-en. Sec. 569, p. 186, L. 1877; re-en. Sec. 569, 1st Div. Rev. Stat. 1879; re-en. Sec. 587, 1st Div. Comp. Stat. 1887; re-en. Sec. 2174, C. Civ. Proc. 1895; re-en. Sec. 7313, Rev. C. 1907; re-en. Sec. 9912, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1213; re-en. Sec. 9912, R.C.M. 1935; R.C.M. 1947, 93-9805.

3-1-515. Arrest and detention by sheriff. Upon executing the warrant of attachment, the sheriff must keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises unless the person arrested entitle himself to be discharged as provided in 3-1-516.

History: En. Sec. 459, p. 226, L. 1867; re-en. Sec. 535, p. 145, Cod. Stat. 1871; re-en. Sec. 570, p. 186, L. 1877; re-en. Sec. 570, 1st Div. Rev. Stat. 1879; re-en. Sec. 588, 1st Div. Comp. Stat. 1887;

re-en. Sec. 2175, C. Civ. Proc. 1895; re-en. Sec. 7314, Rev. C. 1907; re-en. Sec. 9913, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1214; re-en. Sec. 9913, R.C.M. 1935; R.C.M. 1947, 93-9806.

3-1-516. Bail bond — form and conditions of. When a direction to let the person arrested to bail is contained in the warrant of attachment or endorsed thereon, he must be discharged from the arrest upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the court or judge thereupon or they will pay, as may be directed, the sum specified in the warrant or ordered by court or judge.

History: En. Sec. 460, p. 227, L. 1867; re-en. Sec. 536, p. 145, Cod. Stat. 1871; re-en. Sec. 570, p. 187, L. 1877; re-en. Sec. 570, 1st Div. Rev. Stat. 1879; re-en. Sec. 588, 1st Div. Comp. Stat. 1887; re-en. Sec. 2176, C. Civ. Proc. 1895; re-en. Sec. 7315, Rev. C. 1907; re-en. Sec. 9914, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1215; re-en. Sec. 9914, R.C.M. 1935; R.C.M. 1947, 93-9807.

3-1-517. Return of warrant and undertaking. The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested by the return day specified therein.

History: En. Sec. 461, p. 227, L. 1867; re-en. Sec. 537, p. 145, Cod. Stat. 1871; re-en. Sec. 571, p. 187, L. 1877; re-en. Sec. 571, 1st Div. Rev. Stat. 1879; re-en. Sec. 589, 1st Div. Comp. Stat. 1887; re-en. Sec. 2177, C. Civ. Proc. 1895; re-en. Sec. 7316, Rev. C. 1907; re-en. Sec. 9915, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1216; re-en. Sec. 9915, R.C.M. 1935; R.C.M. 1947, 93-9808.

3-1-518. Hearing. When the person arrested has been brought up or appeared, the court or judge must proceed to investigate the charge, must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

History: En. Sec. 399, p. 126, Bannack Stat.; amd. Sec. 462, p. 227, L. 1867; re-en. Sec. 538, p. 145, Cod. Stat. 1871; re-en. Sec. 572, p. 187, L. 1877; re-en. Sec. 572, 1st Div. Rev. Stat. 1879; re-en. Sec. 590, 1st Div. Comp. Stat. 1887; re-en. Sec. 2178, C. Civ. Proc. 1895; re-en. Sec. 7317, Rev. C. 1907; re-en. Sec. 9916, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1217; re-en. Sec. 9916, R.C.M. 1935; R.C.M. 1947, 93-9809.

3-1-519. Penalty. Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged. If it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding $500 or he may be imprisoned not exceeding 5 days, or both.

History: En. Sec. 463, p. 227, L. 1867; re-en. Sec. 539, p. 145, Cod. Stat. 1871; re-en. Sec. 573, p. 188, L. 1877; re-en. Sec. 573, 1st Div. Rev. Stat. 1879; re-en. Sec. 591, 1st Div. Comp. Stat. 1887; amd. Sec. 2179, C. Civ. Proc. 1895; re-en. Sec. 7318, Rev. C. 1907; re-en. Sec. 9917, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1218; re-en. Sec. 9917, R.C.M. 1935; R.C.M. 1947, 93-9810.

3-1-520. Imprisonment to compel performance. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he shall have performed it. In that case, the act must be specified in the warrant of commitment.

History: En. Sec. 400, p. 126, Bannack Stat.; re-en. Sec. 464, p. 227, L. 1867; re-en. Sec. 540, p. 146, Cod. Stat. 1871; re-en. Sec. 574, p. 188, L. 1877; re-en. Sec. 574, 1st Div. Rev. Stat. 1879; re-en. Sec. 592, 1st Div. Comp. Stat. 1887; re-en. Sec. 2180, C. Civ. Proc. 1895; re-en. Sec. 7319, Rev. C. 1907; re-en. Sec. 9918, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1219; re-en. Sec. 9918, R.C.M. 1935; R.C.M. 1947, 93-9811.

3-1-521. Proceedings when party fails to appear. When the warrant of arrest has been returned served, if the person arrested does not appear on the return day, the court or judge may issue another warrant of arrest or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued and the costs of the proceeding.

History: En. Sec. 467, p. 227, L. 1867; re-en. Sec. 542, p. 146, Cod. Stat. 1871; re-en. Sec. 576, p. 188, L. 1877; re-en. Sec. 576, 1st Div. Rev. Stat. 1879; re-en. Sec. 594, 1st Div. Comp. Stat. 1887; re-en. Sec. 2181, C. Civ. Proc. 1895; re-en. Sec. 7320, Rev. C. 1907; re-en. Sec. 9919, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1220; re-en. Sec. 9919, R.C.M. 1935; R.C.M. 1947, 93-9812.

3-1-522. Illness sufficient excuse — confinement under arrest. (1) Whenever by the provisions of this part an officer is required to keep a person arrested on a warrant of attachment in custody and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend is sufficient excuse for not bringing him up.

(2) The officer must not confine a person arrested upon a warrant in a prison or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

History: En. Sec. 467, p. 227, L. 1867; re-en. Sec. 543, p. 146, Cod. Stat. 1871; re-en. Sec. 577, p. 188, L. 1877; re-en. Sec. 577, 1st Div. Rev. Stat. 1879; re-en. Sec. 595, 1st Div. Comp. Stat. 1887; re-en. Sec. 2182, C. Civ. Proc. 1895; re-en. Sec. 7321, Rev. C. 1907; re-en. Sec. 9920, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1221; re-en. Sec. 9920, R.C.M. 1935; R.C.M. 1947, 93-9813.

3-1-523. Judgment and orders in contempt cases final. The judgment and orders of the court or judge made in cases of contempt are final and conclusive. There is no appeal, but the action of a district court or judge can be reviewed on a writ of certiorari by the supreme court or a judge thereof and the action of a justice of the peace or other court of limited jurisdiction by the district court or judge of the county in which such justice or judge of such court of limited jurisdiction resides.

History: En. Sec. 468, p. 228, L. 1867; amd. Sec. 544, p. 146, Cod. Stat. 1871; re-en. Sec. 578, p. 188, L. 1877; re-en. Sec. 578, 1st Div. Rev. Stat. 1879; re-en. Sec. 596, 1st Div. Comp. Stat. 1887; en. Sec. 2183, C. Civ. Proc. 1895; re-en. Sec. 7322, Rev. C. 1907; re-en. Sec. 9921, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1222; re-en. Sec. 9921, R.C.M. 1935; R.C.M. 1947, 93-9814; amd. Sec. 6, Ch. 466, L. 1979.

Part 6

Restrictions on Judicial Officers

3-1-601. Certain officers not to practice law or administer estates. (1) No justice or judge of a court of record or clerk of any court may practice law in any court in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, or patent rights or other proceedings before any department of the state or general government or any court of the United States during his continuance in office.

(2) Neither the court administrator nor any assistant may practice law in any of the courts of this state while holding his position.

(3) No justice or judge of a court of record may act as administrator or executor of any estate for compensation.

History: (1), (3)En. Secs. 454, 455, p. 134, Bannack Stat.; re-en. Secs. 611, 612, p. 159, Cod. Stat. 1871; re-en. Secs. 531, 532, p. 179, L. 1877; re-en. Secs. 531, 532, 1st Div. Rev. Stat. 1879; re-en. Secs. 548, 549, 1st Div. Comp. Stat. 1887; re-en. Sec. 181, C. Civ. Proc. 1895; re-en. Sec. 6316, Rev. C. 1907; re-en. Sec. 8869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8869, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1963; Sec. 93-902, R.C.M. 1947; (2)En. 82-511 by Sec. 2, Ch. 396, L. 1977; Sec. 82-511, R.C.M. 1947; R.C.M. 1947, 82-511, 93-902(part); amd. Sec. 4, Ch. 21, L. 1979.

3-1-602. Restrictions on justices of the peace practicing law or taking claims for collection. (1) Except as provided in subsection (2), a justice of the peace may not:

(a) practice law;

(b) draw contracts, conveyances, or other legal instruments or documents;

(c) take any claim or bill for collection or act as a collection agent in any sense; or

(d) perform any legal duties other than those prescribed by law as his official duties in the conduct of cases and proceedings in his court.

(2) A justice of the peace who is an attorney and who is admitted to practice law before the supreme court of the state of Montana may engage in the general practice of law and practice law in all courts in the state of Montana, except that such a justice, his law partner or associate, or a member, associate, or employee of a firm of which he is a member may not represent a party involved in a case which is filed or tried in his court or in any justice's court located in the same county as his court or which is appealed from such a court.

(3) A justice of the peace who violates any of the provisions of this section is guilty of malfeasance in office and shall be removed from his office of justice of the peace and thereafter be disqualified from holding such office.

History: En. Sec. 3, p. 92, L. 1901; re-en. Sec. 3114, Rev. C. 1907; re-en. Sec. 4863, R.C.M. 1921; re-en. Sec. 4863, R.C.M. 1935; amd. Sec. 1, Ch. 228, L. 1959; amd. Sec. 13, Ch. 344, L. 1977; R.C.M. 1947, 16-3605.

3-1-603. No judicial officer of court of record to have partner practicing law. No judicial officer of a court of record may have a partner acting as attorney or counsel in any court of this state.

History: En. Sec. 456, p. 135, Bannack Stat.; re-en. Sec. 613, p. 159, Cod. Stat. 1871; re-en. Sec. 533, p. 179, L. 1877; re-en. Sec. 533, 1st Div. Rev. Stat. 1879; re-en. Sec. 550, 1st Div. Comp. Stat. 1887; amd. Sec. 182, C. Civ. Proc. 1895; re-en. Sec. 6317, Rev. C. 1907; re-en. Sec. 8870, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 172; re-en. Sec. 8870, R.C.M. 1935; amd. Sec. 33, Ch. 344, L. 1977; R.C.M. 1947, 93-903.

3-1-604. Restrictions on municipal court judges. No municipal court judge may practice law or hold office in a political party during his term of office.

History: En. 11-1704.1 by Sec. 4, Ch. 429, L. 1977; R.C.M. 1947, 11-1704.1.

3-1-605. Restrictions on judicial officers after term has expired. A judicial officer as defined in 1-1-202, after the expiration of his term of office, may not act as attorney or counsel in any action or special proceeding which has been before him in his official character.

History: En. Sec. 183, C. Civ. Proc. 1895; re-en. Sec. 6318, Rev. C. 1907; re-en. Sec. 8871, R.C.M. 1921; re-en. Sec. 8871, R.C.M. 1935; R.C.M. 1947, 93-904; amd. Sec. 5, Ch. 21, L. 1979.

3-1-606. Justice of the peace or constable not to purchase judgment. (1) A justice of the peace may not purchase or be interested in the purchase of any judgment or part thereof on his docket or on any docket in his possession. A constable may not purchase or be interested in the purchase of any judgment or part thereof on the docket of a justice of the peace of the county of which he is a constable or on a docket in the possession of such a justice.

(2) Violation of subsection (1) is a misdemeanor.

History: En. Sec. 113, p. 205, Bannack Stat.; re-en. Sec. 126, p. 298, Cod. Stat. 1871; re-en. Sec. 126, 4th Div. Rev. Stat. 1879; re-en. Sec. 135, 4th Div. Comp. Stat. 1887; amd. Sec. 197, Pen. C. 1895; re-en. Sec. 8216, Rev. C. 1907; re-en. Sec. 10860, R.C.M. 1921; Cal. Pen. C. Sec. 97; re-en. Sec. 10860, R.C.M. 1935; Sec. 94-808, R.C.M. 1947; redes. 16-3607 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 5, Ch. 253, L. 1975; amd. Sec. 14, Ch. 344, L. 1977; R.C.M. 1947, 16-3607.

3-1-607. Supreme court justice or district court judge not to run for office — resignation required. (1) If a person occupying the office of chief justice or associate justice of the supreme court or judge of a district court of the state of Montana becomes a candidate for election to any elective office under the laws of the state of Montana, he shall immediately, and in any event at or before the time when he must file as a candidate for such office in any primary or special or general election, resign from his office of chief justice, associate justice, or district judge.

(2) The resignation becomes effective immediately upon its delivery to the proper officer or superior.

(3) The resignation requirement applies except when the person is a bona fide candidate for reelection to the identical office then occupied by him or for another nonpartisan judicial office the term of which does not commence earlier than the end of the term of the office then occupied by him.

History: En. Sec. 1, Ch. 139, L. 1957; amd. Sec. 21, Ch. 344, L. 1977; R.C.M. 1947, 93-219(1).

3-1-608. Forced vacancy. In the event of a failure to resign, the office of chief justice, associate justice, or district judge automatically becomes vacant and the former occupant has no further right, power, or authority therein for any purpose and no right to any emoluments thereof, notwithstanding the fact that a successor is not appointed or elected. The vacancy becomes operative to deprive the person of the emoluments of the office in order to carry out the policy of this section and 3-1-607.

History: En. Sec. 1, Ch. 139, L. 1957; amd. Sec. 21, Ch. 344, L. 1977; R.C.M. 1947, 93-219(2).

Part 7

Court Administrator

3-1-701. Office of court administrator — appointment and term of office. There is established the office of court administrator. The supreme court shall appoint a court administrator. The court administrator shall hold his position at the pleasure of the court.

History: En. 82-510 by Sec. 1, Ch. 396, L. 1977; R.C.M. 1947, 82-510.

3-1-702. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide such information to the legislature upon request;

(3) recommend to the supreme court improvements in the judiciary; and

(4) perform such other duties as the supreme court may assign.

History: En. 82-512 by Sec. 3, Ch. 396, L. 1977; R.C.M. 1947, 82-512.

3-1-703. Cooperation of court officers. All court officers, including clerks of district courts, shall comply with requests made by the court administrator for information and statistical and financial data bearing on the business transacted by the courts.

History: En. 82-513 by Sec. 4, Ch. 396, L. 1977; R.C.M. 1947, 82-513.

Part 8

Disqualification and Substitution of Judges Supreme Court Rule

3-1-801. Superseded. Sup. Ct. Order dated June 29, 1981.

History: En. Sup. Ct. Ord. dated Dec. 29, 1976; 34 St. Rep. 26; superseded, Sup. Ct. Ord. dated June 29, 1981.

Compiler's Comments

Superseded Sections — Effective Date: Subsection 9 of the Supreme Court's order dated Dec. 29, 1976, provided in part: "This rule supersedes and is to be used to the exclusion of sections 93-901, 93-2906(4), 93-2907, 93-6602(2), 95-1709, and 95-2010, R.C.M. 1947.

This rule shall be effective on March 1, 1977, it to apply to all actions filed on or after that date."

3-1-802. Disqualification and substitution of judges — all courts.

DISQUALIFICATION OF JUDGES

Any justice, judge, or justice of the peace must not sit or act in any action or proceeding:

1. To which he is a party, or in which he is interested;

2. When he is related to either party by consaguinity or affinity within the sixth degree, computed according to the rules of law;

3. When he has been attorney or counsel in the action or proceeding for any party or when he rendered or made the judgment, order or decision appealed from.

SUBSTITUTION OF JUDGES — PEREMPTORY CHALLENGES

Peremptory challenges shall apply only to District Court proceedings.

A motion for a substitution of a judge may be made by any party to a District Court proceeding. In a civil case, each adverse party is entitled to two substitutions of a judge. In a criminal case, the state and each defendant is entitled to one substitution of a judge.

A motion for substitution of a judge shall be made by filing a written motion for substitution reading as follows:

"The undersigned hereby moves for substitution of another judge for Judge __________ in this cause." The clerk of court shall immediately give notice thereof to all parties and to the judge named in the motion. Upon filing this notice, the judge named in the motion shall have no further power to act in the cause other than to call in another judge, which he shall do forthwith, and to set the calendar.

The first district judge disqualified shall have the duty of calling in all subsequent district judges.

When a case is filed in a multi-judge district, it shall be the duty of the clerk of court to stamp the name of the judge to which the case is assigned on the face of the summons, order to show cause, or information and all copies thereof.

Whenever a judge is assigned a case for ten consecutive days and the attorneys of record on both sides have knowledge of the assignment for that period of time, and if during this time no motion for substitution of a judge is filed against him, all rights to move for substitution of a judge shall be deemed waived by all parties, unless the presiding judge disqualifies himself thereafter in which case the right to move for substitution of a judge is reinstated and the ten-day period starts running anew.

Whenever an acceptance of jurisdiction is filed by a new judge, it shall be the duty of the clerk of court to mail a copy of the acceptance of jurisdiction to the original judge who first had jurisdiction of the case, and a copy by certified mail with return receipt requested to each attorney of record. Service to an attorney may be made by delivery of a copy personally to the attorney, or by obtaining a written receipt from the attorney. Proof of service shall be stapled to the acceptance of jurisdiction in the file. The clerk of court shall contact the new judge accepting jurisdiction and request that judge to communicate with the judge having jurisdiction in the first instance, so that calendaring can be expeditiously handled.

When a new trial is ordered in any case, whether by order of the District Court or the Supreme Court, each adverse party shall be entitled to file one motion for substitution of a judge in the manner provided herein, whether or not that party has previously filed motions for substitution of a judge. Such motions must be filed:

a. If the new trial has been ordered by the District Court, within ten days after the time for appealing the order has elapsed.

b. If the new trial has been ordered by the Supreme Court, within ten days after notice of receipt of the remittitur has been received by the respective parties from the clerk of the District Court.

DISQUALIFICATION FOR CAUSE

This section shall apply to all District Court judges, justices of the peace, municipal court judges and to all judges acting as a Small Claims Court. All references to judge are meant to include a District Court judge, a justice of the peace, a municipal judge and a judge presiding under the Small Claims Act.

Whenever a party to any proceeding in any court makes and files a timely and sufficient affidavit that a judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein.

In the case of a district judge, another district judge shall be assigned by the chief justice of the Supreme Court to hear such disqualification proceedings. If an affidavit is against a justice of the peace, municipal judge or a judge presiding under the Small Claims Act, any district judge may appoint another justice of the peace or municipal judge to hear such proceeding. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than twenty days before the original date of trial, or good cause shall be shown for failure to file it within such time. It shall be accompanied by a certificate of counsel of record stating that it has been made in good faith.

DIRECT CONTEMPT OF COURT:

None of the provisions of this rule shall apply to any person in any cause involving a direct contempt of court.

INDIRECT CONTEMPT OF COURT:

When a person is charged in a District Court with indirect contempt of court, he shall be entitled to file one motion for substitution of a judge in the manner provided herein, whether or not that party has previously filed motions for substitution of a judge. Such a motion must be filed within ten days of the charge of indirect contempt of court. In that event, the judge of the court against which the contempt is alleged to have been committed shall notify the chief justice of the Supreme Court who shall appoint another district judge to hear and decide the charge.

History: **En. Sup. Ct. Ord. dated June 29, 1981.**

Compiler's Comments

Former Rule Superseded — Effective Date: Supreme Court Order dated June 29, 1981, provided, in part, as follows:

"By the authority of Article VII, Section 2, of the 1972 Montana Constitution, this rule supersedes and is to be used to the exclusion of the rule on disqualification and substitution of judges adopted by Supreme Court Order dated December 29, 1976, and published as section 3-1-801, MCA.

This rule shall take effect on July 1, 1981."

Effect of Publication: Section 2, Ch. 1, L. 1979, which adopted the MCA, provided that publication of a Supreme Court Rule is done for the benefit of code users. The publication of this section should not be construed as a legislative attempt to readopt or promulgate the rule.

Part 9 reserved

Part 10

Judicial Nomination Commission

3-1-1001. Creation, composition, and function of commission. (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court. The commission shall be composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively so engaged or retired, who shall be appointed by the governor;

(b) two attorneys actively engaged in the practice of law, one from each congressional district, who shall be appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to such election by the chief justice of the supreme court. The election shall be considered an appointment for the purposes of this part.

(2) Appointments provided for in this section shall be made within 30 days of the completion of the preceding terms.

History: **En. Sec. 1, Ch. 470, L. 1973; amd. Sec. 30, Ch. 344, L. 1977; R.C.M. 1947, 93-705; amd. Sec. 6, Ch. 21, L. 1979.**

3-1-1002. Staggered terms of members. (1) All original members named to the commission shall serve until January 1, 1976. Their successors shall serve as follows:

(a) The members appointed by the governor shall serve 4-year terms.

(b) The attorneys appointed by the supreme court shall serve 2-year terms.

(c) The judge elected shall serve a 2-year term.

(2) Thereafter all members shall serve terms of 4 years.

History: **En. Sec. 2, Ch. 470, L. 1973; R.C.M. 1947, 93-706(1), (2); amd. Sec. 7, Ch. 21, L. 1979.**

3-1-1003. Vacancies. (1) In the event a vacancy on the commission occurs, the governor shall appoint a replacement for the remainder of the term. Such replacement shall be a member of the same group as the member he replaces.

(2) Appointments provided for in this section shall be made within 30 days of the occurrence of any vacancy.

History: **En. Sec. 2, Ch. 470, L. 1973; R.C.M. 1947, 93-706(3), (4); amd. Sec. 8, Ch. 21, L. 1979.**

3-1-1004. No compensation — travel expenses. The members of the commission are not entitled to compensation for their services, but they are entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, while actually engaged in the discharge of their official duties.

History: **En. Sec. 12, Ch. 470, L. 1973; amd. Sec. 29, Ch. 453, L. 1977; R.C.M. 1947, 93-716.**

3-1-1005. Commission members not eligible for judicial office. Members of the commission are not eligible for nomination to a judicial office during their term on the commission or for 1 year thereafter.

History: **En. Sec. 11, Ch. 470, L. 1973; R.C.M. 1947, 93-715.**

3-1-1006. Secretary — election and duties. (1) The commission shall elect one of its members to serve as the secretary and upon such election shall notify the governor of the name and mailing address of such person.

(2) The secretary shall keep a record of all proceedings by the commission and act as corresponding secretary with the governor's office.

History: **En. Sec. 3, Ch. 470, L. 1973; R.C.M. 1947, 93-707.**

3-1-1007. Commission to make rules — confidentiality of proceedings. (1) The commission shall make rules for the conduct of its affairs.

(2) The proceedings of the commission and the related documents shall be open to the public except when the demands of individual privacy clearly exceed the merits of public exposure.

History: **En. Sec. 13, Ch. 470, L. 1973; R.C.M. 1947, 93-717; amd. Sec. 1, Ch. 423, L. 1979.**

3-1-1008. Quorum. Four members of the commission shall constitute a quorum for the transaction of business. To submit a name to the governor, there must be a concurrence of at least four members.

History: En. Sec. 4, Ch. 470, L. 1973; R.C.M. 1947, 93-708.

3-1-1009. Investigation by commission — application for consideration. (1) The commission and each member are authorized to make investigations concerning the qualifications of eligible persons.

(2) Any lawyer in good standing who has the qualifications set forth by law for holding judicial office may be a candidate and may make application to the commission for consideration, or application may be made by any person on his behalf.

History: En. Sec. 5, Ch. 470, L. 1973; R.C.M. 1947, 93-709.

3-1-1010. List submitted to governor — report on proceedings. The commission shall meet forthwith after a vacancy occurs on the supreme court or district court and submit to the governor within 30 days from the date of the vacancy a list of not less than three or more than five nominees for appointment. The list must be accompanied by a written report to the governor indicating the vote on each nominee, the content of the application submitted by each nominee, and the commission's reasons for recommending each nominee for appointment.

History: En. Sec. 6, Ch. 470, L. 1973; R.C.M. 1947, 93-710; amd. Sec. 9, Ch. 21, L. 1979; amd. Sec. 2, Ch. 423, L. 1979.

3-1-1011. Governor to appoint from list. The governor must make an appointment from the list of nominees submitted by the commission.

History: En. Sec. 7, Ch. 470, L. 1973; R.C.M. 1947, 93-711; amd. Sec. 10, Ch. 21, L. 1979.

3-1-1012. When governor fails to appoint. If the governor fails to appoint within 30 days after receipt of the list, the chief justice or acting chief justice shall make the appointment.

History: En. Sec. 8, Ch. 470, L. 1973; R.C.M. 1947, 93-712; amd. Sec. 11, Ch. 21, L. 1979.

3-1-1013. Senate confirmation — appointment in the interim. Each appointment shall be confirmed by the senate, but an appointment made while the senate is not in session is effective until the end of the next session. If the appointment is not confirmed, the office shall be vacant and another selection of nominees and appointment shall be made.

History: En. Sec. 9, Ch. 470, L. 1973; R.C.M. 1947, 93-713; amd. Sec. 12, Ch. 21, L. 1979.

3-1-1014. Duration of appointment — election for remainder of term. An appointee confirmed by the senate serves until the next succeeding general election. The candidate elected at that election holds the office for the remainder of the unexpired term.

History: En. Sec. 10, Ch. 470, L. 1973; R.C.M. 1947, 93-714; amd. Sec. 13, Ch. 21, L. 1979.

Part 11

Judicial Standards Commission

3-1-1101. Creation and composition of commission. There is created a judicial standards commission consisting of five members as follows:

(1) two district court judges from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court, and the two so elected certified as to such election by the chief justice of the supreme court, which for the purpose of the language of this part shall be considered as an appointment;

(2) one attorney who has practiced law in this state for at least 10 years, appointed by the supreme court;

(3) two citizens from different congressional districts who are not attorneys or judges of any court, active or retired, appointed by the governor.

History: **En. Sec. 1, Ch. 95, L. 1973; R.C.M. 1947, 93-718.**

3-1-1102. Staggered terms of members. (1) The first appointments made under this part are as follows:

(a) The supreme court shall designate by certificate of the chief justice one district court judge to serve for 4 years and one to serve for 2 years.

(b) The attorney shall serve for 4 years.

(c) The governor shall appoint one citizen to serve for 4 years and one to serve for 2 years.

(2) Thereafter, all terms shall be for 4 years.

History: **En. Sec. 2, Ch. 95, L. 1973; R.C.M. 1947, 93-719.**

3-1-1103. Terminated membership — vacancies. (1) Commission membership terminates if a member ceases to hold the position that qualified him for appointment.

(2) In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

History: **En. Sec. 3, Ch. 95, L. 1973; R.C.M. 1947, 93-720.**

3-1-1104. No compensation — travel expenses. A commission member is not entitled to compensation for his services but is entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of his duties.

History: **En. Sec. 4, Ch. 95, L. 1973; amd. Sec. 30, Ch. 453, L. 1977; R.C.M. 1947, 93-721.**

3-1-1105. Confidential proceedings — rules for commission. (1) Except as provided in 3-1-1107 and 3-1-1121 through 3-1-1126, all papers filed with and proceedings before the commission or masters are confidential and the filing of papers with and the testimony given before the commission or masters is privileged communication.

(2) The commission shall make rules for the conduct of its affairs and the enforcement of confidentiality consistent with this part.

History: **En. Sec. 6, Ch. 95, L. 1973; R.C.M. 1947, 93-723; amd. Sec. 1, Ch. 441, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "Except as provided in 3-1-1107 and 3-1-1121 through 3-1-1126" at the beginning of subsection (1) (see Commissioner Correction Compiler's Comment); combined subsections (1) and (2), and renumbered subsection (3); added a provision in subsection (2) that the commission shall make rules for the enforcement of confidentiality consistent with this part.

Commissioner Correction: The exception clause added to subsection (1) by the 1981 amendment did not include section 8 of the amending session law chapter, which corresponds to 3-1-1126, MCA. The code commissioner included 3-1-1126 in the clause because it had been section 7 of the introduced bill, which was included in the clause; when section 7 was renumbered section 8 during the legislative process, the exception clause, by apparent oversight, was not changed accordingly.

3-1-1106. Investigation of judicial officers — hearing — recommendations. (1) The commission or any citizen of the state may, upon good cause shown, initiate an investigation of any judicial officer in the state by filing a verified written complaint with the commission.

(2) The commission, after such investigation as it considers necessary and upon the finding of good cause, may:

(a) order a hearing to be held before it concerning the censure, suspension, removal, or retirement of a judicial officer; or

(b) request the supreme court to appoint one or more special masters who are judges of courts of record to hear and take evidence and to report to the commission.

(3) If after hearing or after considering the record and report of the masters the commission finds the charges true, it shall recommend to the supreme court the censure, suspension, removal, or retirement of the judicial officer.

History: En. Sec. 5, Ch. 95, L. 1973; R.C.M. 1947, 93-722.

3-1-1107. Action by supreme court. (1) The supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:

(a) order censure, suspension, removal, or retirement of a judicial officer; or

(b) wholly reject the recommendation.

(2) Any hearing conducted before the supreme court relative to a recommendation by the commission, together with all papers pertaining to such recommendation, shall be accessible to the public.

History: En. Sec. 7, Ch. 95, L. 1973; R.C.M. 1947, 93-724; amd. Sec. 3, Ch. 441, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

3-1-1108. Nonparticipation of interested judicial officer. A judicial officer who is a member of the commission or of the supreme court may not participate in any proceeding involving his own censure, suspension, removal, or retirement or that of his spouse, a relative within the sixth degree of consanguinity, or the spouse of such a relative.

History: En. Sec. 8, Ch. 95, L. 1973; amd. Sec. 31, Ch. 344, L. 1977; R.C.M. 1947, 93-725.

3-1-1109. Interim disqualification of judicial officer. A judicial officer is disqualified from acting as such, without loss of salary, while there is pending:

(1) an indictment or an information charging him with a crime punishable as a felony under Montana or federal law; or

(2) a formal proceeding before the commission for his removal or retirement.

History: En. Sec. 9, Ch. 95, L. 1973; amd. Sec. 32, Ch. 344, L. 1977; R.C.M. 1947, 93-726.

3-1-1110. Procedure when convicted of crime. (1) On recommendation of the commission, the supreme court may suspend a judicial officer from office without salary when he pleads guilty or no contest or is found guilty of a crime punishable as a felony under Montana or federal law or of any other crime involving moral turpitude.

(2) If his conviction is reversed, suspension terminates and he shall be paid his salary for the period of suspension.

(3) If he is suspended and his conviction becomes final, the supreme court shall remove him from office.

History: En. Sec. 10, Ch. 95, L. 1973; R.C.M. 1947, 93-727.

3-1-1111. Orders for retirement or removal. (1) Upon an order for retirement, the judicial officer shall be retired with the same rights and privileges as if he retired pursuant to statute.

(2) Upon an order for removal, the judicial officer shall be removed from office and his salary shall cease from the date of the order. He shall be ineligible for any other judicial office and pending further order of the court is suspended from practicing law.

History: En. Sec. 11, Ch. 95, L. 1973; R.C.M. 1947, 93-728.

3-1-1112 through 3-1-1120 reserved.

3-1-1121. Public disclosure required. If the commission finds good cause to order a hearing pursuant to 3-1-1106(2), the commission must allow public access to:

(1) all papers pertaining to each finding of good cause, including charges that are later determined not to be grounds for recommending retirement or disciplinary action to the supreme court;

(2) the proceedings in which the commission or masters hear the charges against a judge; and

(3) all transcripts or recordings of proceedings before the commission or masters pertaining to the matters described in subsections (1) and (2).

History: En. Sec. 2, Ch. 441, L. 1981.

Complier's Comments

Codification Instruction: Section 9, Ch. 441, L. 1981, provided: "Sections 2 through 7 [3-1-1121 through 3-1-1126] are intended to be codified as an integral part of Title 3, chapter 1, part 11, and the provisions of Title 3, chapter 1, part 11, apply to sections 2 through 7." Sections 2 through 7 of the introduced bill are codified at 3-1-1121 through 3-1-1126. Section 3, Ch. 446, L. 1981 was added to the introduced bill and sections 3 through 7 of the introduced bill were renumbered sections 4 through 8. The codification instruction was not amended to reflect that change. Section 8 was codified as 3-1-1126 because that was the apparent intent of the original bill.

Source: Sections 3-1-1121 through 3-1-1126 are partially based upon American Bar Association, Proposed Standards Relating to Judicial Discipline and Disability Nos. 1.1 through 9.4 (1977).

3-1-1122. Judge's waiver of confidentiality — hearing made public. The commission must allow public access to all papers filed with and testimony and hearings before the commission or masters in a given case if the judge against whom a complaint has been filed waives his right of confidentiality and requests in writing that the proceedings be accessible to the public.

History: En. Sec. 4, Ch. 441, L. 1981.

3-1-1123. Public statements by commission. In any case in which the subject matter becomes public, through independent sources or through a waiver of confidentiality by the judge against whom the complaint has been filed, the commission may issue statements as it considers appropriate in order to:

(1) confirm the pendency of the investigation;
(2) clarify the procedural aspects of the disciplinary proceedings;
(3) explain the right of the judge to a fair hearing without prejudgment;
(4) state that the judge denies the allegations; or
(5) declare that there is insufficient evidence for a finding of good cause.

History: **En. Sec. 5, Ch. 441, L. 1981.**

3-1-1124. Disclosure for judicial selection — appointment or assignment. If in connection with the selection or appointment of a judge, any state or federal agency seeks information or written materials from the commission concerning that judge, information may be divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge affected unless the judge signs a waiver of notice. If in connection with the assignment of a retired judge to judicial duties, any appropriate authority seeks information or written materials from the commission about that judge, information may be divulged in accordance with procedures prescribed by the commission, including reasonable notice to the judge affected unless the judge signs a waiver of notice.

History: **En. Sec. 6, Ch. 441, L. 1981.**

3-1-1125. Efficiency and effectiveness — audit authorized. (1) The legislative auditor may audit the commission to determine whether it is efficiently and effectively processing complaints against judicial officers in the state in accordance with this part.

(2) The confidentiality provisions of this part do not bar the legislative auditor from obtaining access to any information possessed by the commission that is necessary to the legislative audit function so long as confidential information is kept confidential by the legislative auditor.

History: **En. Sec. 7, Ch. 441, L. 1981.**

3-1-1126. Commission report to legislature. (1) The commission shall submit to the legislature each year the legislature meets in regular session a report containing the following information:

(a) identification of each complaint, whether or not verified, received by the commission during the preceding biennium by a separate number that in no way reveals the identity of the judge complained against;

(b) the date each complaint was filed;

(c) the general nature of each complaint;

(d) whether there have been previous complaints against the same judge and, if so, the general nature of the previous complaints;

(e) the present status of all complaints filed with or pending before the commission during the preceding biennium; and

(f) whenever a final disposition of a complaint has been made during the preceding biennium, the nature of the disposition, the commission's recommendation, if any, to the supreme court, and the action taken by the supreme court.

(2) The commission must observe the confidentiality provisions of this part in fulfilling the requirements of this section.

History: **En. Sec. 8, Ch. 441, L. 1981.**

CHAPTER 2

SUPREME COURT

Part 1 — Supreme Court Justices

Section
3-2-101. Number, election, and term of office.
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Part 1

Supreme Court Justices

3-2-101. Number, election, and term of office. The supreme court consists of a chief justice and six associate justices who are elected by the qualified electors of the state at large at the general state elections next preceding the expiration of the terms of office of their predecessors, respectively, and hold their offices for the term of 8 years from and after the first Monday of January next succeeding their election.

History: En. Sec. 12, C. Civ. Proc. 1895; re-en. Sec. 6244, Rev. C. 1907; amd. Sec. 1, Ch. 31, Ex. L. 1919; re-en. Sec. 8790, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 40; re-en. Sec. 8790, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1973; R.C.M. 1947, 93-201; amd. Sec. 1, Ch. 683, L. 1979.

Compiler's Comments

New justices — how selected. Sec. 2, Ch. 683, L. 1979, provided: "The associate justices created by [this act] shall be filled initially at the 1980 general election, and the individuals elected shall take office on the first Monday of January, 1981."

Effective period. Sec. 5, Ch. 683, L. 1979, provided: "This act is effective until the first Monday of January, 1989, at which time the number of associate justices authorized by this act shall revert to four. The code commissioner is directed to make appropriate changes in the Montana Code Annotated to reflect the intent of this section."

Severability. Sec. 6, Ch. 683, L. 1979, is a severability section.

3-2-102. Qualifications and residence. (1) No person is eligible for the office of justice of the supreme court unless he is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) Justices of the supreme court must reside within the state during their terms of office.

History: En. Sec. 161, C. Civ. Proc. 1895; re-en. Sec. 6309, Rev. C. 1907; re-en. Sec. 8863, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 157; re-en. Sec. 8863, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1973; amd. Sec. 27, Ch. 344, L. 1977; R.C.M. 1947, 93-702(part).

3-2-103. Computation of term of office. The years during which a justice of the supreme court is to hold office are to be computed respectively from and including the first Monday of January of any one year to and excluding the first Monday of January of the next succeeding year.

History: En. Sec. 13, C. Civ. Proc. 1895; re-en. Sec. 6245, Rev. C. 1907; re-en. Sec. 8797, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 41; re-en. Sec. 8797, R.C.M. 1935; R.C.M. 1947, 93-208.

3-2-104. Salaries — expenses. (1) The salaries of justices of the supreme court are provided for in 2-16-405.

(2) If any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after submission for decision, the justice of the supreme court who has been assigned to write the opinion, order, or decision of the court shall submit an affidavit on or before the 90th day to the chief justice setting forth the case name, cause number, and the reason the matter has not been decided. Copies of the affidavit must be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and final briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the justice shall have an additional 30 days to decide the matter which has been submitted. No cause, motion, or other proceeding may

remain undecided for more than 120 days after submission for decision without the approval of a majority of the other members of the supreme court for good cause shown in an affidavit requesting additional time. If a justice of the supreme court violates the provisions of this section, any party to a matter pending in violation of this section or, by a majority vote, the other members of the supreme court may refer the matter to the judicial standards commission. If the court, acting upon the recommendation of the commission, determines the justice is not in compliance with this section, it shall order that the state auditor not issue a warrant for payment of services for 1 month, which pay is forfeited by the justice.

(3) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties.

History: (1)En. by Code Commissioner, 1979; (2)En. Sec. 1, Ch. 85, L. 1917; re-en. Sec. 8815, R.C.M. 1921; re-en. Sec. 8815, R.C.M. 1935; Sec. 93-304, R.C.M. 1947; R.C.M. 1947, 93-304(part); (3)En. Sec. 1, Ch. 528, L. 1979; amd. Sec. 1, Ch. 375, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2) which provided that the state auditor would not pay a justice until receiving an affidavit that the justice's work load was not delinquent; inserted subsection (2).

Effective Date: Section 3, Ch. 375, L. 1981, provided: "This act is effective on passage and approval." Approved April 15, 1981.

Transition: Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability: Sec. 17, Ch. 528, L. 1979, was a severability section.

Part 2

Supreme Court Jurisdiction

3-2-201. Types of jurisdiction. The jurisdiction of the supreme court is of two kinds:

(1) original; and

(2) appellate.

History: En. Sec. 18, C. Civ. Proc. 1895; re-en. Sec. 6250, Rev. C. 1907; re-en. Sec. 8802, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 50; re-en. Sec. 8802, R.C.M. 1935; R.C.M. 1947, 93-213.

3-2-202. Original jurisdiction. (1) In the exercise of its original jurisdiction, the supreme court has power to issue writs of mandamus, certiorari, prohibition, injunction, and habeas corpus.

(2) It also has power to issue all other writs necessary and proper to the complete exercise of its appellate jurisdiction.

History: En. Sec. 19, C. Civ. Proc. 1895; re-en. Sec. 6251, Rev. C. 1907; re-en. Sec. 8803, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 51; re-en. Sec. 8803, R.C.M. 1935; R.C.M. 1947, 93-214.

3-2-203. Appellate jurisdiction. The appellate jurisdiction of the supreme court extends to all cases at law and in equity.

History: En. Sec. 20, C. Civ. Proc. 1895; re-en. Sec. 6252, Rev. C. 1907; re-en. Sec. 8804, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 52; re-en. Sec. 8804, R.C.M. 1935; R.C.M. 1947, 93-215.

3-2-204. Powers and duties of court on appeals. (1) The supreme court may affirm, reverse, or modify any judgment or order appealed from and may direct the proper judgment or order to be entered or direct a new trial or further proceedings to be had.

(2) The decision of the court must be given in writing, and a syllabus thereof must be prepared by the court and filed with the opinion.

(3) In giving its decision, if a new trial be granted, the court must pass upon and determine all the questions of law involved in the case presented upon such appeal and necessary to the final determination of the case.

(4) Its judgment in appealed cases must be remitted to the court from which the appeal was taken.

(5) In equity cases and in matters and proceedings of an equitable nature, the supreme court shall review all questions of fact arising upon the evidence presented in the record, whether the same be presented by specifications of particulars in which the evidence is alleged to be insufficient or not, and determine the same, as well as questions of law, unless for good cause a new trial or the taking of further evidence in the court below be ordered. Nothing herein shall be construed to abridge in any manner the powers of the supreme court in other cases.

History: En. Ch. 1, Ex. L. 1903; re-en. Sec. 6253, Rev. C. 1907; re-en. Sec. 8805, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 53; re-en. Sec. 8805, R.C.M. 1935; R.C.M. 1947, 93-216.

3-2-205. Injunctions. (1) Upon such terms and under such rules as the supreme court may establish, the supreme court may continue in force an injunction order made by a district court or judge or grant an injunction order and writ pending an appeal to the supreme court from an order of a district court or judge refusing or dissolving an injunction.

(2) No action to obtain an injunction may be commenced in the supreme court except in cases where the state is a party, the public is interested, or the rights of the public are involved. The proper district court has jurisdiction of all injunctions and the commencement of all actions therefor, except as provided in this section.

(3) The supreme court may provide rules for the commencement and trial of actions for injunctions in that court.

History: En. Sec. 23, C. Civ. Proc. 1895; re-en. Sec. 6255, Rev. C. 1907; re-en. Sec. 8807, R.C.M. 1921; re-en. Sec. 8807, R.C.M. 1935; R.C.M. 1947, 93-218; amd. Sec. 14, Ch. 21, L. 1979.

3-2-206 through 3-2-210 reserved.

3-2-211. Concurrence of majority — for what necessary. The concurrence of a majority of the justices of the supreme court is necessary for the issuance of any writ or the transaction of any business except such as can be done at chambers.

History: En. Sec. 22, C. Civ. Proc. 1895; re-en. Sec. 6254, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1921; re-en. Sec. 8806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 54; re-en. Sec. 8806, R.C.M. 1935; R.C.M. 1947, 93-217(part).

3-2-212. Powers of justices individually — certiorari and habeas corpus. (1) Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state upon petition by or on behalf of any person held in actual custody and may make such writs returnable before himself, the supreme court, or justice thereof or before any district court of the state or any judge thereof. Such writs may be heard and determined by the justice, court, or judge before whom they are made returnable.

(2) Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court.

History: Ap. p. Sec. 170, C. Civ. Proc. 1895; re-en. Sec. 6313, Rev. C. 1907; re-en. Sec. 8866, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 165; re-en. Sec. 8866, R.C.M. 1935; Sec. 93-801, R.C.M. 1947; Ap. p. Sec. 22, C. Civ. Proc. 1895; re-en. Sec. 6254, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1921; re-en. Sec. 8806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 54; re-en. Sec. 8806, R.C.M. 1935; Sec. 93-217, R.C.M. 1947; R.C.M. 1947, 93-217(part), 93-801.

Part 3

Sessions of the Supreme Court

3-2-301. Who shall preside. The chief justice presides at all sessions of the supreme court, and in case of his absence, the associate justice having the shortest term to serve presides in his stead.

History: En. Sec. 15, C. Civ. Proc. 1895; re-en. Sec. 6247, Rev. C. 1907; re-en. Sec. 8799, R.C.M. 1921; re-en. Sec. 8799, R.C.M. 1935; R.C.M. 1947, 93-210(part).

3-2-302. Quorum. A majority of the justices is necessary to form a quorum of the court. Any decision must be concurred in by a majority of the justices of the court, but one or more of the justices may adjourn the court from day to day or to a day certain.

History: En. Sec. 15, C. Civ. Proc. 1895; re-en. Sec. 6247, Rev. C. 1907; re-en. Sec. 8799, R.C.M. 1921; re-en. Sec. 8799, R.C.M. 1935; R.C.M. 1947, 93-210(part); amd. Sec. 4, Ch. 683, L. 1979.

3-2-303. Terms of supreme court. (1) Four terms of the supreme court must be held each year at the seat of government, commencing on the first Tuesdays of March, June, October, and December.

(2) The chief justice or any two justices have power to call a special term at any time.

History: En. Sec. 16, C. Civ. Proc. 1895; re-en. Sec. 6248, Rev. C. 1907; re-en. Sec. 8800, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 47; re-en. Sec. 8800, R.C.M. 1935; R.C.M. 1947, 93-211(part).

3-2-304. Physical facilities. (1) If proper rooms in which to hold the court and for the accommodation of the officers thereof are not provided by the state, together with attendants, furniture, fuel, lights, and stationery, suitable and sufficient for the transaction of business, the court or a majority thereof may direct the clerk of the supreme court to provide such rooms, attendants, furniture, lights, fuel, and stationery.

(2) The expenses thereof, certified by any two justices to be correct, must be paid out of the state treasury only out of funds in the state treasury appropriated to the supreme court.

History: En. Sec. 16, C. Civ. Proc. 1895; re-en. Sec. 6248, Rev. C. 1907; re-en. Sec. 8800, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 47; re-en. Sec. 8800, R.C.M. 1935; R.C.M. 1947, 93-211(part); amd. Sec. 1, Ch. 610, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "a majority" for "any two justices"; and in (2), inserted "only" before "out of", deleted "any" before "funds", deleted "not otherwise" before "appropriated", and inserted "to the supreme court" at the end.

Part 4

Clerk of the Supreme Court

3-2-401. Election and term of office. There must be a clerk of the supreme court who must be elected by the electors at large of the state and hold his office for the term of 6 years from the first Monday of January next succeeding his election.

History: En. Sec. 870, Pol. C. 1895; re-en. Sec. 299, Rev. C. 1907; re-en. Sec. 370, R.C.M. 1921; Cal. Pol. C. Secs. 749-758; re-en. Sec. 370, R.C.M. 1935; amd. Sec. 45, Ch. 100, L. 1973; R.C.M. 1947, 82-501.

3-2-402. Duties. It is the duty of the clerk to:

(1) keep the seal of the supreme court, its records and files, and the roll of attorneys and counselors at law;

(2) adjourn the court from day to day at the beginning of any term in the absence of any justice and until the arrival of a majority of the justices;

(3) file all papers or transcripts required by law to be filed;

(4) issue writs and certificates and approve bonds or undertakings when so required;

(5) make out all transcripts to the supreme court of the United States;

(6) make copies of papers or records when demanded by law or the rules of the court; and

(7) perform such other duties as may be required of him by law and the rules and practice of the supreme court.

History: Ap. p. Sec. 871, Pol. C. 1895; re-en. Sec. 300, Rev. C. 1907; re-en. Sec. 371, R.C.M. 1921; re-en. Sec. 371, R.C.M. 1935; Sec. 82-502, R.C.M. 1947; Ap. p. Sec. 3, p. 208, L. 1891; amd. Sec. 873, Pol. C. 1895; re-en. Sec. 302, Rev. C. 1907; re-en. Sec. 373, R.C.M. 1921; re-en. Sec. 373, R.C.M. 1935; Sec. 82-504, R.C.M. 1947; R.C.M. 1947, 82-502, 82-504; amd. Sec. 15, Ch. 21, L. 1979.

3-2-403. Fees. The clerk must collect in advance the following fees:

(1) for filing the transcript on appeal in any civil case appealed to the supreme court, $20 payable by the appellant and $10 payable by the respondent at the time of his appearance, as payment in full for all services rendered in the case up to the remittitur to the court below;

(2) for filing a petition for any writ, $20, as payment in full for all services rendered in the cause;

(3) for a certificate of admission as an attorney, $5;

(4) for making transcripts or copies of papers or records, 15 cents per folio;

(5) for comparing any document requiring a certificate, 5 cents per folio;

(6) for each certificate under seal, $1.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R.C.M. 1921; re-en. Sec. 372, R.C.M. 1935; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963; amd. Sec. 3, Ch. 218, L. 1967; amd. Sec. 18, Ch. 344, L. 1977; R.C.M. 1947, 82-503(1).

3-2-404. Disposition of fees. Except as otherwise provided by law, three-fourths of all fees collected by the clerk must be paid into the state treasury and shall be credited to the general fund, and the remaining one-fourth of the fees shall be paid to the public employees' retirement division of the department of administration to be credited to the Montana judges' retirement system account.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R.C.M. 1921; re-en. Sec. 372, R.C.M. 1935; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963; amd. Sec. 3, Ch. 218, L. 1967; amd. Sec. 18, Ch. 344, L. 1977; R.C.M. 1947, 82-503(2); amd. Sec. 1, Ch. 321, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "Except as otherwise provided by law" at the beginning of the section; substituted "and the remaining one-fourth of the fees" for "one-fourth of all fees collected by him" after "general fund" near the middle of the section.

3-2-405. Settlements and accounts to state auditor. (1) The clerk is responsible and must account for and, in his settlement with the state auditor, must be charged with the full amount of all fees collected or chargeable and accruing in causes brought into the court for services rendered therein up to the time of each settlement. The settlement must take place quarterly, and immediately thereafter the clerk must pay the amount found due into the treasury or to the public employees' retirement division, as provided in 3-2-404.

(2) He must also at the end of each quarter render to the state auditor, in such form as that officer prescribes, an account in detail and under oath of all fees chargeable and accruing in causes brought into court and not included in his previous accounts.

(3) His salary may not be allowed or paid until all fees so accruing for which he is chargeable have been accounted for and paid over.

History: En. Sec. 874, Pol. C. 1895; re-en. Sec. 303, Rev. C. 1907; re-en. Sec. 374, R.C.M. 1921; amd. Sec. 374, R.C.M. 1935; amd. Sec. 19, Ch. 344, L. 1977; R.C.M. 1947, 82-505.

3-2-406. Deputy clerk. The clerk of the supreme court shall appoint a deputy who, in the absence of the principal or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled. Such deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of his duties.

History: En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 82-601(part).

Part 5

Marshal of the Supreme Court

3-2-501. Appointment of marshal and other employees. The supreme court must appoint a marshal of the supreme court and may appoint such other attendants, reporters, and clerks as are necessary, who hold office at the pleasure of the court.

History: En. Sec. 862, Pol. C. 1895; re-en. Sec. 295, Rev. C. 1907; re-en. Sec. 366, R.C.M. 1921; re-en. Sec. 366, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1939; amd. Sec. 1, Ch. 205, L. 1955; R.C.M. 1947, 82-1801.

3-2-502. Duties of marshal. (1) It shall be the duty of the marshal to attend upon the supreme court and the justices thereof at each term of court. He shall be the executive officer of the court and act as crier thereof.

(2) He must serve within the state all returns and processes issuing from the supreme court and shall have all the powers and exercise all the duties pertaining to sheriffs as to the district courts so far as the same are applicable.

(3) He shall act as a law clerk for the supreme court justices.

History: En. Sec. 863, Pol. C. 1895; re-en. Sec. 296, Rev. C. 1907; re-en. Sec. 367, R.C.M. 1921; re-en. Sec. 367, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1939; R.C.M. 1947, 82-1802.

3-2-503. Accounts of marshal. All accounts of the marshal must be filed in the supreme court in a bill of items under oath certified by the chief justice and, when properly chargeable against the state and approved by the department of administration, must be paid out of the state treasury upon the warrant of the state auditor.

History: En. Sec. 865, Pol. C. 1895; re-en. Sec. 298, Rev. C. 1907; re-en. Sec. 369, R.C.M. 1921; re-en. Sec. 369, R.C.M. 1935; amd. Sec. 99, Ch. 326, L. 1974; R.C.M. 1947, 82-1804.

Part 6

Form and Reporting of Decisions

3-2-601. Decisions to be in writing. In the determination of causes, all decisions of the supreme court must be given in writing, the grounds of the decision must be stated, and each justice agreeing or concurring with the decision must so indicate by signing the decision. Any justice disagreeing with a decision must so indicate by written dissent.

History: En. Sec. 440, p. 132, Bannack Stat.; re-en. Sec. 597, p. 157, Cod. Stat. 1871; re-en. Sec. 17, C. Civ. Proc. 1895; re-en. Sec. 6249, Rev. C. 1907; re-en. Sec. 8801, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 49; re-en. Sec. 8801, R.C.M. 1935; amd. Sec. 1, Ch. 271, L. 1975; R.C.M. 1947, 93-212.

3-2-602. Justices to report decisions. The justices of the supreme court shall report the decisions of the supreme court.

History: En. Sec. 2, p. 72, L. 1899; re-en. Sec. 314, Rev. C. 1907; re-en. Sec. 378, R.C.M. 1921; Cal. Pol. C. Secs. 767-782; re-en. Sec. 378, R.C.M. 1935; amd. Sec. 2, Ch. 182, L. 1949; R.C.M. 1947, 82-2001.

3-2-603. Duties of reporters. (1) The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of the cases shall be made under the supervision of and pursuant to rules adopted by the justices of the supreme court.

(2) Reports of all cases shall be furnished to the West Publishing Company for inclusion in its publication, the Pacific Reporter, and to any other private printing or duplicating concern requesting the reports for publication.

(3) The department of administration, on request of the supreme court, shall contract with a publishing house to publish volumes of reports. The style, size, and format of the reports shall be determined by the justices. The department of administration shall prepare and issue a call for bids and, in accordance with the terms and specifications of the call, contract with the lowest and best bidder. The contract shall provide that the copies of the reports purchased by state or local governmental agencies of Montana,

including the reports purchased by the supreme court pursuant to 3-2-604, shall be sold to them by the publisher at the cost of publication.

History: **En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907; re-en. Sec. 379, R.C.M. 1921; re-en. Sec. 379, R.C.M. 1935; amd. Sec. 1, Ch. 174, L. 1947; amd. Sec. 1, Ch. 14, L. 1961; amd. Sec. 1, Ch. 305, L. 1967; amd. Sec. 79, Ch. 326, L. 1974; R.C.M. 1947, 82-2002; amd. Sec. 2, Ch. 494, L. 1981.**

Compiler's Comments

1981 Amendment: Added the last sentence of subsection (3).

3-2-604. Distribution of reports. (1) On the publication of each volume of the reports, the supreme court shall purchase up to 221 copies from the publisher. The court shall distribute them at no charge and in the following manner:

(a) to the state library for distribution, five copies;

(b) to the library of congress, four copies;

(c) to the university of Montana law library, two copies;

(d) to each justice of the supreme court, district judge, and county attorney, one copy;

(e) to the law library of the state of Montana, four copies;

(f) to the attorney general, 11 copies;

(g) to other institutions, publishers, authors, and libraries with which the state law librarian has established a system of exchange for materials of comparable value, up to 50 copies; and

(h) to the university of Montana up to 50 copies to be used by the law librarian of the university for the purpose of exchanges for materials of comparable value with libraries, universities, and institutions of higher education in other states.

(2) All reports distributed to state, district, and other officers in the state are for the use of their office and shall be, by the person receiving them, turned over to his successor in office.

History: **En. Sec. 896, Pol. C. 1895; re-en. Sec. 312, Rev. C. 1907; amd. Sec. 1, Ch. 203, L. 1921; re-en. Sec. 384, R.C.M. 1921; re-en. Sec. 384, R.C.M. 1935; amd. Sec. 3, Ch. 46, L. 1937; amd. Sec. 20, Ch. 344, L. 1977; R.C.M. 1947, 82-2007; amd. Sec. 3, Ch. 494, L. 1981.**

Compiler's Comments

1981 Amendment: Changed "secretary of state" to "supreme court" and "300 copies" to "up to 221 copies" in the first sentence of (1); inserted "at no charge" in the second sentence of (1); deleted the law library of each state and territory, the judges of the United States district courts in the western states, the clerk of district courts in Montana, and state offices from list receiving copies in (1); inserted five copies to the state library, two copies to the University of Montana law library, 11 copies to the attorney general in (1); decreased from five to four the number of copies to the library of congress; inserted "for materials of comparable value, up to 50 copies" and changed "literary and scientific" to "other" before institutions in (1)(g); inserted "for materials of comparable value" and "libraries" in (1)(h); deleted receipt requirement from (2); and made changes in phraseology.

Part 7

Adoption of Rules of Civil Procedure

3-2-701. Power of court over rules. The supreme court of this state shall have the power to regulate the pleading, practice, procedure, and the forms thereof in civil actions in all courts of this state by rules promulgated by it from time to time for the purpose of simplifying judicial proceedings in the courts of Montana and for promoting the speedy determination of litigation upon its merits. Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant and shall not be inconsistent with the constitution of the state of Montana.

History: **En. Sec. 1, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-1.**

3-2-702. Advisory committee. Before any rules are adopted, the supreme court shall appoint an advisory committee consisting of eight members of the bar of the state and at least three judges of the district court to assist the court in considering and preparing such rules as it may adopt.

History: **En. Sec. 2, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-2.**

3-2-703. Distribution of proposed rules — suggestions of bench and bar. (1) Before any rule is adopted, the supreme court shall distribute copies of the proposed rule to the bench and bar of the state for their consideration and suggestions and shall give due consideration to such suggestions as they may submit to the court.

(2) The state bar of Montana or the association of Montana judges may file with the supreme court a petition specifying its suggestions concerning any existing or proposed rule and requesting a hearing thereon within 6 months after the filing of the petition.

History: **En. Sec. 3, Ch. 16, L. 1963; amd. Sec. 54, Ch. 344, L. 1977; R.C.M. 1947, 93-2801-3.**

3-2-704. Local rules. Any district court and the supreme court may adopt rules of court governing its practice so long as such rules are not in conflict with the rules promulgated by the supreme court of the state of Montana in accordance with this part.

History: **En. Sec. 4, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-4.**

3-2-705. No effect on powers of boards or commissions. This part shall not affect the power of any constitutional or statutory commission or board to make rules governing its practice.

History: **En. Sec. 5, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-5.**

3-2-706. Effect on existing laws and rules. All present laws and rules relating to pleading, practice, and procedure shall be effective as rules of court until modified or superseded by subsequent court rule. Upon the adoption of any rule pursuant to this part, such laws and rules insofar as they are in conflict therewith shall thereafter be of no further force and effect.

History: **En. Sec. 6, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-6.**

3-2-707. When rules effective. All rules promulgated under this part shall be effective at a time fixed by the supreme court.

History: **En. Sec. 7, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-7.**

3-2-708. No abridgment of legislative power. This part shall not abridge the right of the legislature to enact, modify, or repeal any statute or modify or repeal any rule of the supreme court adopted pursuant thereto.

History: **En. Sec. 8, Ch. 16, L. 1963; R.C.M. 1947, 93-2801-8.**

CHAPTERS 3 AND 4

RESERVED

CHAPTER 5

DISTRICT COURTS

Part 1 — Definition of Districts and Assignment of Judges

Section
3-5-101. Judicial districts defined.
3-5-102. Number of judges.
Sections 3-5-103 through 3-5-110 reserved.
3-5-111. District courts presided over by judges of other districts.
3-5-112. Order from governor.
3-5-113. Judges pro tempore.

Part 2 — District Court Judges

3-5-201. Election and oath of office.
3-5-202. Qualifications and residence.
3-5-203. Term of office.
3-5-204. Computation of term of office.
Sections 3-5-205 through 3-5-210 reserved.
3-5-211. Salaries and expenses of district judges.
3-5-212. Submission of affidavit — payment of salary — commission to determine compliance.
3-5-213. Expenses when out of district.
3-5-214. Certification and filing of expense claim.
3-5-215. Expenses when not in county of residence.
3-5-216. Itemized statements — verification — filing.

Part 3 — District Court Jurisdiction

3-5-301. Kinds of jurisdiction.
3-5-302. Original jurisdiction.
3-5-303. Appellate jurisdiction.
3-5-304. Process.
Sections 3-5-305 through 3-5-310 reserved.
3-5-311. Powers of judges at chambers.
3-5-312. Jurisdiction of judges coextensive with the state.

Part 4 — Terms and Location of District Courts

3-5-401. Terms of court.
3-5-402. Adjournments — conduct of business in multicounty districts.
3-5-403. Terms and departments in multijudge districts.
3-5-404. When sheriff to provide facilities.
3-5-405. Change of place of holding court in emergency.
3-5-406. Parties to appear at place appointed.
3-5-407. Sheriff to act as crier.

Part 5 — Clerk of the District Court

3-5-501. General duties.
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3-5-506. Index of bonds in criminal cases.
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3-5-508. Docket.
3-5-509. Docket to be available for inspection.
3-5-510. Duties relating to jurors and witnesses.
3-5-511. Procedure in reference to witnesses' certificates.
3-5-512. Statement to board of county commissioners concerning witnesses.
3-5-513. Probate records.
3-5-514. Naturalization records.
3-5-515. Fees for naturalization.

Part 6 — Court Reporters

3-5-601. Appointment — oath.
3-5-602. Salary and expenses — apportionment.
3-5-603. Duties.
3-5-604. Copies of proceedings.
Sections 3-5-605 through 3-5-610 reserved.
3-5-611. Reporter pro tempore.
3-5-612. Reporter's report prima facie evidence.

Chapter Compiler's Comments

Interim Study of Justice System: SJR 2 (1981) requested an interim study of the Montana criminal justice system, including alternative ways and effects of redistricting Montana's district court system, establishing a statewide district attorney system for criminal prosecutions, and providing for a statewide system of representation for indigents accused of crimes and required a report of the findings of the study to the legislature. The Legislative Council designated the Joint Subcommittee on Judiciary to conduct the study.

Part 1

Definition of Districts and Assignment of Judges

3-5-101. Judicial districts defined. In this state there are 19 judicial districts, distributed as follows:

(1) 1st district: Lewis and Clark and Broadwater Counties;
(2) 2nd district: Silver Bow County;
(3) 3rd district: Deer Lodge, Granite, and Powell Counties;
(4) 4th district: Missoula, Mineral, Lake, Ravalli, and Sanders Counties;
(5) 5th district: Beaverhead, Jefferson, and Madison Counties;
(6) 6th district: Park and Sweet Grass Counties;
(7) 7th district: Dawson, McCone, Richland, and Wibaux Counties;
(8) 8th district: Cascade and Chouteau Counties;
(9) 9th district: Teton, Pondera, Toole, and Glacier Counties;
(10) 10th district: Fergus, Judith Basin, and Petroleum Counties;
(11) 11th district: Flathead County;
(12) 12th district: Liberty, Hill, and Blaine Counties;
(13) 13th district: Yellowstone, Big Horn, Carbon, Stillwater, and Treasure Counties;
(14) 14th district: Meagher, Wheatland, Golden Valley, and Musselshell Counties;
(15) 15th district: Roosevelt, Daniels, and Sheridan Counties;
(16) 16th district: Custer, Carter, Fallon, Prairie, Powder River, Garfield, and Rosebud Counties;

(17) 17th district: Phillips and Valley Counties;
(18) 18th district: Gallatin County;
(19) 19th district: Lincoln County.

History: En. Sec. 6256, Rev. C. 1907; re-en. Sec. 8812, R.C.M. 1921; amd. Sec. 1, Ch. 91, L. 1929; re-en. Sec. 8812, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1973; amd. Sec. 1, Ch. 517, L. 1977; R.C.M. 1947, 93-301.

3-5-102. Number of judges. In each judicial district there must be the following number of judges of the district court:

(1) in the 1st, 2nd, 11th, 16th, and 18th districts, two judges each;
(2) in the 8th district, three judges;
(3) in the 4th and 13th districts, four judges each;
(4) in all other districts, one judge each.

History: En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R.C.M. 1921; amd. Sec. 2, Ch. 91, L. 1929; re-en. Sec. 8813, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963; amd. Sec. 1, Ch. 14, L. 1973; amd. Sec. 22, Ch. 344, L. 1977; amd. Sec. 2, Ch. 517, L. 1977; R.C.M. 1947, 93-302(part); amd. Sec. 1, Ch. 542, L. 1979.

Compiler's Comments

New judge — how selected. Sec. 2, Ch. 542, L. 1979, provided: "The judgeship created by this act shall be filled initially at the 1980 general election, and the individual elected shall take office on the first Monday of January, 1981." Chapter 542 added a fourth judge to the 4th Judicial District.

3-5-103 through 3-5-110 reserved.

3-5-111. District courts presided over by judges of other districts. A judge of the district court of any judicial district may hold the district court in any county of another district than his own at the request of the judge thereof or as otherwise provided by law. Upon the request of the governor, it is his duty to do so. In either case the judge holding the court has the same power either in court or chambers as a judge thereof.

History: En. Sec. 36, C. Civ. Proc. 1895; re-en. Sec. 6270, Rev. C. 1907; re-en. Sec. 8821, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 71; re-en. Sec. 8821, R.C.M. 1935; R.C.M. 1947, 93-310; amd. Sec. 28, Ch. 697, L. 1979.

3-5-112. Order from governor. If for any cause a district court is not or cannot be held in any county by the judge or judges thereof or by a district judge requested by such judge or judges to hold such court or if the business of the court in any county is not or cannot be dispatched with reasonable promptness, the governor may, upon application of any interested person, by an order in writing, require some district judge to hold court in said county for such time as may be specified in the order.

History: En. Sec. 164, C. Civ. Proc. 1895; re-en. Sec. 6312, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1915; re-en. Sec. 8823, R.C.M. 1921; re-en. Sec. 8823, R.C.M. 1935; R.C.M. 1947, 93-312.

3-5-113. Judges pro tempore. (1) A civil action in the district court may be tried by a judge pro tempore, who must be a member of the bar of the state, agreed upon in writing by the parties litigant or their attorneys of record, approved by the court, and sworn to try the cause before entering upon his duties.

(2) Any order, judgment, or decree made or rendered by such judge pro tempore shall have the same force and effect as if made or rendered by the court with the regular judge presiding.

History: En. Sec. 37, C. Civ. Proc. 1895; re-en. Sec. 6271, Rev. C. 1907; re-en. Sec. 8822, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 72; re-en. Sec. 8822, R.C.M. 1935; R.C.M. 1947, 93-311.

Part 2

District Court Judges

3-5-201. Election and oath of office. (1) The judges of the district court must be elected by the qualified voters of the district.

(2) Each judge of a district court must, as soon as he has taken and subscribed his official oath, file the same in the office of the secretary of state.

History: (1)En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R.C.M. 1921; amd. Sec. 2, Ch. 91, L. 1929; re-en. Sec. 8813, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963; amd. Sec. 1, Ch. 14, L. 1973; amd. Sec. 22, Ch. 344, L. 1977; amd. Sec. 2, Ch. 517, L. 1977; Sec. 93-302, R.C.M. 1947; (2)En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; Sec. 59-417, R.C.M. 1947; R.C.M. 1947, 59-417(3), 93-302(part).

3-5-202. Qualifications and residence. (1) No person is eligible for the office of judge of a district court unless he is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) A judge of a district court need not be a resident of the district for which he is elected or appointed at the time of his election or appointment, but after his election or appointment, he must reside in a county seat in the district for which he is elected or appointed during his term of office.

History: En. Sec. 161, C. Civ. Proc. 1895; re-en. Sec. 6309, Rev. C. 1907; re-en. Sec. 8863, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 157; re-en. Sec. 8863, R.c.M. 1935; amd. Sec. 1, Ch. 15, L. 1973; amd. Sec. 29, Ch. 344, L. 1977; R.C.M. 1947, 93-702(part).

3-5-203. Term of office. The term of office of judges of the district court is 6 years and begins on the first Monday of January next succeeding their election.

History: Ap. p. Sec. 33, C. Civ. Proc. 1895; re-en. Sec. 6267, Rev. C. 1907; re-en. Sec. 8818, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 68; re-en. Sec. 8818, R.C.M. 1935; Sec. 93-307, R.C.M. 1947; Ap. p. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R.C.M. 1921; amd. Sec. 2, Ch. 91, L. 1929; re-en. Sec. 8813, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963; amd. Sec. 1, Ch. 14, L. 1973; amd. Sec. 22, Ch. 344, L. 1977; amd. Sec. 2, Ch. 517, L. 1977; Sec. 93-302, R.C.M. 1947; R.C.M. 1947, 93-302(part), 93-307.

3-5-204. Computation of term of office. The years during which a judge of a district court is to hold office are to be computed respectively from and including the first Monday of January of any one year to and excluding the first Monday of January of the next succeeding year.

History: En. Sec. 34, C. Civ. Proc. 1895; re-en. Sec. 6268, Rev. C. 1907; re-en. Sec. 8819, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 69; re-en. Sec. 8819, R.C.M. 1935; R.C.M. 1947, 93-308.

3-5-205 through 3-5-210 reserved.

3-5-211. Salaries and expenses of district judges. (1) The annual salary of each district judge is as follows:

(a) for the fiscal year beginning July 1, 1981, and ending June 30, 1982, $42,273;

(b) after June 30, 1982, $45,841.

(2) Actual and necessary expenses for each district judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties.

History: En. Sec. 1, Ch. 176, L. 1919; re-en. Sec. 8814, R.C.M. 1921; re-en. Sec. 8814, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1947; amd. Sec. 1, Ch. 84, L. 1951; amd. Sec. 1, Ch. 247, L. 1955; amd. Sec. 1, Ch. 198, L. 1959; amd. Sec. 1, Ch. 187, L. 1961; amd. Sec. 2, Ch. 212, L. 1963; amd. Sec. 2, Ch. 308, L. 1967; amd. Sec. 1, Ch. 322, L. 1969; amd. Sec. 1, Ch. 4, 2nd Ex. L. 1971; amd. Sec. 2, Ch. 377, L. 1974; amd. Sec. 3, Ch. 461, L. 1977; R.C.M. 1947, 93-303; amd. Sec. 2, Ch. 528, L. 1979; amd. Sec. 1, Ch. 651, L. 1979; amd. Sec. 2, Ch. 605, L. 1981.

Compiler's Comments

1981 Amendment: In (1)(a), changed "1979" to "1981", "1980" to "1982", and increased the salary from $37,000 to $42,273; and in (1)(b), changed "1980" to "1982", and increased the salary from $39,000 to $45,841.

Salary Commission Bill: Chapter 605, L. 1981 (HB 580) was introduced at the request of the Montana Salary Commission. See commission report, Legislative Council, 1980.

Transition: Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability: Sec. 17, Ch. 528, L. 1979, was a severability section.

3-5-212. Submission of affidavit — payment of salary — commission to determine compliance. (1) If any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after submission for decision, the district court judge before whom the matter is pending shall submit an affidavit on or before the 90th day to the chief justice of the supreme court setting forth the case name, cause number, and the reason the matter has not been decided. Copies of the affidavit must be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and final briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the district judge shall have an additional 30 days to decide the matter which has been submitted. No cause, motion, or other proceeding may remain undecided for more than 120 days after submission for decision without the approval of a majority of the supreme court for good cause shown in an affidavit requesting additional time.

(2) If a district judge violates the provisions of this section, any party to a matter pending in violation of this section or, by a majority vote, the supreme court may refer the matter to the judicial standards commission.

(3) If the supreme court, acting upon the recommendation of the commission, determines that the judge is not in compliance with this section, it shall order that the state auditor not issue a warrant for payment of services for 1 month, which pay is forfeited by the judge.

History: En. Sec. 1, Ch. 85, L. 1917; re-en. Sec. 8815, R.C.M. 1921; re-en. Sec. 8815, R.C.M. 1935; R.C.M. 1947, 93-304(part); amd. Sec. 2, Ch. 375, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former section which provided: "The state auditor shall not draw a warrant in payment of the services of any judge of the district court until such judge shall have filed with the auditor an affidavit that no cause, motion, or other proceeding in his court remains pending and undecided for a period of 90 days after the same shall have been submitted for decision unless casualty or sickness shall have intervened." in its entirety; inserted existing language.

Effective Date: Section 3, Ch. 375, L. 1981, provided: "This act is effective on passage and approval." Approved April 15, 1981.

3-5-213. Expenses when out of district. A judge who sits in the place of another judge in the trial or hearing of an action or proceeding in a district other than his own or in the supreme court or who attends a conference of judges in Helena called by the chief justice of the supreme court shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, while engaged in that service as follows:

(1) his travel expenses in going from the county seat which he makes his place of residence to the place of trial, hearing, or conference and return; and

(2) his board and lodging while engaged in the trial, hearing, or conference.

History: En. Sec. 1, Ch. 3, L. 1907; re-en. Sec. 293, Rev. C. 1907; re-en. Sec. 8816, R.C.M. 1921; re-en. Sec. 8816, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1953; amd. Sec. 61, Ch. 439, L. 1975; amd. Sec. 23, Ch. 344, L. 1977; R.C.M. 1947, 93-305; amd. Sec. 16, Ch. 21, L. 1979; amd. Sec. 3, Ch. 528, L. 1979.

3-5-214. Certification and filing of expense claim. As soon as his services in connection with the trial, hearing, or conference are concluded, the judge shall certify in detail his actual and necessary travel expenses as specified in 3-5-213, and shall file the claim with the state to be processed as provided by law.

History: En. Sec. 2, Ch. 3, L. 1907; re-en. Sec. 294, Rev. C. 1907; re-en. Sec. 8817, R.C.M. 1921; re-en. Sec. 8817, R.C.M. 1935; amd. Sec. 31, Ch. 97, L. 1961; R.C.M. 1947, 93-306; amd. Sec. 17, Ch. 21, L. 1979; amd. Sec. 4, Ch. 528, L. 1979.

3-5-215. Expenses when not in county of residence. A district judge of a judicial district composed of more than one county who, for the purpose of holding court and disposing of judicial business, goes to a county of his judicial district other than the county in which he resides and therein holds court or transacts judicial business shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred on account thereof from the time he leaves his place of residence until he returns thereto.

History: En. Sec. 1, Ch. 91, L. 1911; re-en. Sec. 8824, R.C.M. 1921; re-en. Sec. 8824, R.C.M. 1935; amd. Sec. 2, Ch. 455, L. 1973; amd. Sec. 62, Ch. 439, L. 1975; amd. Sec. 24, Ch. 344, L. 1977; R.C.M. 1947, 93-313; amd. Sec. 5, Ch. 528, L. 1979.

3-5-216. Itemized statements — verification — filing. (1) On the first of each month or within 3 days thereafter, such district judge who may desire to avail himself of the provisions of 3-5-215 shall make out an itemized claim against the state of Montana showing with dates and particulars his actual and necessary travel expenses for the preceding month.

(2) He shall verify such claim by certifying that the items of the claim are true and correct and are wholly unpaid and that the expenditures therein enumerated were made in the discharge of official business while away from home.

(3) He shall then file such claim with the state to be processed as provided by law.

History: En. Sec. 2, Ch. 91, L. 1911; re-en. Sec. 8825, R.C.M. 1921; re-en. Sec. 8825, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1951; amd. Sec. 10, Ch. 97, L. 1961; R.C.M. 1947, 93-314; amd. Sec. 6, Ch. 528, L. 1979.

Part 3

District Court Jurisdiction

3-5-301. Kinds of jurisdiction. The jurisdiction of the district court is of two kinds:

(1) original; and

(2) appellate.

History: En. Sec. 40, C. Civ. Proc. 1895; re-en. Sec. 6274, Rev. C. 1907; re-en. Sec. 8828, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 75; re-en. Sec. 8828, R.C.M. 1935; R.C.M. 1947, 93-317.

3-5-302. Original jurisdiction. (1) The district court has original jurisdiction in:

(a) all criminal cases amounting to felony;

(b) all civil and probate matters;

(c) all cases at law and in equity;

(d) all cases of misdemeanor not otherwise provided for; and

(e) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has concurrent original jurisdiction with the justice's court in the following criminal cases amounting to misdemeanor:

(a) misdemeanors arising at the same time as and out of the same transaction as a charged felony;

(b) misdemeanors resulting from the reduction of a felony offense charged in the district court; and

(c) misdemeanors resulting from a finding of a lesser included offense in a felony case.

(3) The district court has exclusive original jurisdiction in all civil actions that might result in a judgment against the state for the payment of money.

(4) The district court has the power of naturalization and of issuing papers therefor in all cases where it is authorized to do so by the laws of the United States.

(5) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in their respective districts. Injunctions and writs of prohibition and habeas corpus may be issued and served on legal holidays and nonjudicial days.

History: En. Sec. 41, C. Civ. Proc. 1895; re-en. Sec. 6275, Rev. C. 1907; re-en. Sec. 8829, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 76; re-en. Sec. 8829, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1973; R.C.M. 1947, 93-318; amd. Sec. 1, Ch. 409, L. 1979; amd. Sec. 1, Ch. 594, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (2) relating to concurrent misdemeanor jurisdiction.

Effective Date: Section 2, Ch. 594, L. 1981, provided: "This act is effective on passage and approval." Approved May 1, 1981.

3-5-303. Appellate jurisdiction. The district court has appellate jurisdiction in such cases arising in justices' courts and other courts of limited jurisdiction in their respective districts as may be prescribed by law and consistent with the constitution.

History: En. Sec. 42, C. Civ. Proc. 1895; re-en. Sec. 6276, Rev. C. 1907; re-en. Sec. 8830, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 77; re-en. Sec. 8830, R.C.M. 1935; R.C.M. 1947, 93-319; amd. Sec. 7, Ch. 466, L. 1979.

3-5-304. Process. The process of the district court extends to all parts of the state.

History: En. Sec. 43, C. Civ. Proc. 1895; re-en. Sec. 6277, Rev. C. 1907; re-en. Sec. 8831, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 78; re-en. Sec. 8831, R.C.M. 1935; R.C.M. 1947, 93-320(part).

3-5-305 through 3-5-310 reserved.

3-5-311. Powers of judges at chambers. (1) The judge of the district court may at chambers:

(a) issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original and remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in his district;

(b) grant all orders and writs which are usually granted in the first instance upon an ex parte application and hear and dispose of such orders and writs;

(c) hear and determine any matter necessary in the exercise of his powers in matters of probate or in any action or proceeding provided by law and any action in which all party defendants have made default;

(d) issue any process, make any order, and make and enter any default judgment.

(2) When default judgments are entered in default cases, as herein provided, the judge shall forward to the clerk of the court of the county in which the action is pending the judgment so made, together with a minute of the proceedings had thereon, which shall be by said clerk incorporated into the minutes of the court.

(3) If a jury is necessary, the judge may open court and obtain a jury as in other cases.

History: En. Sec. 477, p. 138, Bannack Stat.; amd. Sec. 624, p. 161, Cod. Stat. 1871; re-en. Sec. 684, 1st Div. Rev. Stat. 1879; re-en. Sec. 704, 1st Div. Comp. Stat. 1887; amd. Sec. 171, C. Civ. Proc. 1895; re-en. Sec. 6314, Rev. C. 1907; re-en. Sec. 8867, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 166; amd. Sec. 1, Ch. 79, L. 1931; re-en. Sec. 8867, R.C.M. 1935; R.C.M. 1947, 93-802.

3-5-312. Jurisdiction of judges coextensive with the state. (1) The jurisdiction of the judges of the district courts of the state of Montana in rendering and signing judgments, making findings and rendering decrees, and making orders to show cause and all ex parte orders, in chambers, shall be coextensive with the boundaries of the state of Montana as to all matters presented to or heard by them and of which they have jurisdiction.

(2) Such judgments, findings, decrees, and orders, when so rendered, made, or signed, shall have the same force and effect as to matters under their jurisdiction as if done in open court in the county in which the action, proceeding, or matter is pending or was heard.

History: En. Sec. 1, Ch. 53, L. 1923; re-en. Sec. 8867.1, R.C.M. 1935; R.C.M. 1947, 93-803.

Part 4

Terms and Location of District Courts

3-5-401. Terms of court. (1) The district court of each county which is a judicial district by itself has no terms and must always be open for the transaction of business, except on legal holidays and nonjudicial days.

(2) (a) In each district where two or more counties are united, the judge thereof must fix the term of court in each county in his district and there must be at least four terms a year in each county. Any order of the judge of such district fixing terms of court shall be filed in the office of the clerk of the district court in each county of his district and shall remain in effect until further order of the judge.

(b) Nothing in this section shall be construed to prevent the calling of a special term of court, with or without a jury, when in the opinion of the presiding judge the same is necessary.

(c) The district judge may adjourn a term of district court in one county to a future day certain and in the meantime hold court in another county.

History: En. Sec. 38, C. Civ. Proc. 1895; amd. Sec. 1, p. 156, L. 1901; re-en. Sec. 6272, Rev. C. 1907; re-en. Sec. 8826, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 73; re-en. Sec. 8826, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1959; R.C.M. 1947, 93-315(part).

3-5-402. Adjournments — conduct of business in multicounty districts. (1) Adjournments from day to day or from time to time are to be construed as recesses in the session or term and shall not prevent the court from sitting at any time.

(2) In districts where two or more counties are united, court may be held, causes tried with or without a jury, and business transacted in any and all of the counties of the district continuously and simultaneously, with or without recesses, and without regard to the beginning or ending of any of the terms in any of the counties of the district.

(3) The judge of such district may hold court in one county of such district, try causes with or without a jury, and transact business, while at the same time court may be held, causes tried with or without a jury, and business transacted in any other county of such district by the same judge or by any other district judge of the state, when requested or assigned thereto under any of the provisions of the statutes of Montana.

History: En. Sec. 39, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 184, L. 1907; re-en. Sec. 6273, Rev. C. 1907; re-en. Sec. 8827, R.C.M. 1921; re-en. Sec. 8827, R.C.M. 1935; amd. Sec. 2, Ch. 144, L. 1959; R.C.M. 1947, 93-316.

3-5-403. Terms and departments in multijudge districts. (1) In each judicial district which has now or may hereafter have more than one judge, as many terms or sessions of court may be held at the same time as there are judges in the district, either elected or appointed to, called into, or assigned to the performance of the duties of holding court therein.

(2) The judges elected or appointed to hold office in each judicial district having more than one judge must divide the court into departments, prescribe the order of business, and make rules for the government of such court. Each department shall be numbered, and each judge shall be assigned to one of such numbered departments.

(3) The judges must apportion the business of the court among themselves as equally as may be. In case of their failure for any cause to make such apportionment or to assign each judge to a numbered department, the supreme court, upon application of any interested person, shall make an order apportioning such business and assigning each judge to a numbered department and cause the same to be entered upon the minute book of the district court in each county in such district. Such order shall remain in full

force and effect until modified or repealed by the authority making it. The failure or refusal of any district judge to carry out the terms of such order shall constitute a contempt of the supreme court.

(4) The principal office of the judgeship in the 4th district created by Chapter 542, L. 1979, shall be in Lake County. The chief judge of the district shall have authority to assign a judge to such office.

History: **(1) thru (3)En. Sec. 44, C. Civ. Proc. 1895; re-en. Sec. 6278, Rev. C. 1907; amd. Sec. 1, Ch. 7, L. 1915; re-en. Sec. 8832, R.C.M. 1921; re-en. Sec. 8832, R.C.M. 1935; amd. Sec. 1, Ch. 229, L. 1961; R.C.M. 1947, 93-321; (4)En. Sec. 3, Ch. 542, L. 1979.**

3-5-404. When sheriff to provide facilities. (1) If suitable rooms for holding the district court and chambers of the judge of said court be not provided in any county by the board of county commissioners thereof, together with the attendants, furniture, fuel, lights, and stationery sufficient for the transaction of business, the court or the judge thereof may direct the sheriff of the county to provide such rooms, attendants, furniture, fuel, lights, and stationery.

(2) The expenses incurred, certified by the judge to be correct, are a charge against the county treasury and must be paid out of the general fund thereof.

History: **En. Sec. 142, C. Civ. Proc. 1895; re-en. Sec. 6302, Rev. C. 1907; re-en. Sec. 8856, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 144; re-en. Sec. 8856, R.C.M. 1935; R.C.M. 1947, 93-513.**

3-5-405. Change of place of holding court in emergency. (1) The judge of the district court authorized to hold or preside at a court appointed to be held at a particular place may, by an order filed with the clerk and published as he may prescribe, direct that the court be held or continued at any place in the county other than that appointed when war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction or danger of the public building appointed for the holding the court may render it necessary.

(2) He may, in the same manner, revoke the order and, in his discretion, appoint another place in the same county for holding the court.

History: **En. Sec. 140, C. Civ. Proc. 1895; re-en. Sec. 6300, Rev. C. 1907; re-en. Sec. 8854, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 142; re-en. Sec. 8854, R.C.M. 1935; R.C.M. 1947, 93-511.**

3-5-406. Parties to appear at place appointed. When the court is held at the place appointed, as provided in 3-5-405, every person held to appear at the court must appear at the place so appointed.

History: **En. Sec. 141, C. Civ. Proc. 1895; re-en. Sec. 6301, Rev. C. 1907; re-en. Sec. 8855, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 143; re-en. Sec. 8855, R.C.M. 1935; R.C.M. 1947, 93-512.**

3-5-407. Sheriff to act as crier. The sheriff in attendance upon district court must act as the crier thereof, call the parties and witnesses and all other persons bound to appear before the court, and make proclamation of the opening and adjournment of the court and of any other matter under its direction.

History: **En. Sec. 4397, Pol. C. 1895; re-en. Sec. 3026, Rev. C. 1907; re-en. Sec. 4790, R.C.M. 1921; Cal. Pol. C. Sec. 4189; re-en. Sec. 4790, R.C.M. 1935; R.C.M. 1947, 16-2718; amd. Sec. 18, Ch. 21, L. 1979.**

Part 5

Clerk of the District Court

3-5-501. General duties. The clerk of the district court, in addition to keeping the records and performing the duties prescribed elsewhere, shall:

(1) take charge of and safely keep or dispose of according to law all books, papers, and records which are filed or deposited in his office;

(2) act as clerk of the district court and attend each term or session thereof and upon the judges at chambers when required;

(3) issue all process and notices required to be issued;

(4) enter all orders, judgments, and decrees proper to be entered;

(5) keep in each court a register of actions, as provided in 3-5-504;

(6) keep for the district court two separate indexes, one labeled "General Index—Plaintiffs" and the other labeled "General Index—Defendants", which shall be in the form prescribed in 3-5-502;

(7) keep a minute book, which must contain the daily proceedings of court, which may be signed by the clerk;

(8) keep a fee book, in which must be shown in an itemized form all fees that he has received for any services rendered in his capacity as clerk.

History: Ap. p. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; Sec. 16-3001, R.C.M. 1947; Ap. p. Sec. 4441, Pol. C. 1895; re-en. Sec. 3049, Rev. C. 1907; re-en. Sec. 4816, R.C.M. 1921; re-en. Sec. 4816, R.C.M. 1935; Sec. 16-3002, R.C.M. 1947; R.C.M. 1947, 16-3001(part), 16-3002; amd. Sec. 1, Ch. 104, L. 1981.

Compiler's Comments

1981 Amendment: Deleted indexing requirement from (7).

3-5-502. Indexes to court records. Each clerk of court in each county of the respective judicial districts of the state shall keep, in addition to the records required by law, an index called "General Index—Plaintiffs" and also a second index to be called "General Index—Defendants". Each index shall be in a form determined by the clerk to best fulfill the needs of the court and other users of the index and shall contain, at a minimum, those entries required by 3-5-503.

History: En. Sec. 4442, Pol. C. 1895; re-en. Sec. 3050, Rev. C. 1907; re-en. Sec. 4817, R.C.M. 1921; re-en. Sec. 4817, R.C.M. 1935; R.C.M. 1947, 16-3003; amd. Sec. 2, Ch. 104, L. 1981.

Compiler's Comments

1981 Amendment: Renamed indexes as "General Index—Plaintiffs" and "General Index—Defendants"; added second sentence providing broad guidelines to clerk concerning index; and deleted specific column headings.

3-5-503. Duties concerning indexes. Said clerk shall cause to be made in each index correct entries, under the appropriate headings, of each and every action begun in the court of which he is clerk, entering them alphabetically by the name of the plaintiff in the General Index—Plaintiffs and alphabetically by the name of the defendants in the General Index—Defendants.

History: En. Sec. 4443, Pol. C. 1895; re-en. Sec. 3051, Rev. C. 1907; re-en. Sec. 4818, R.C.M. 1921; re-en. Sec. 4818, R.C.M. 1935; R.C.M. 1947, 16-3004; amd. Sec. 3, Ch. 104, L. 1981.

Compiler's Comments

1981 Amendment: Renamed indexes as "General Index—Plaintiffs" and "General Index—Defendants"; deleted redundant requirement that entries continue to be made from time to time.

3-5-504. Register of actions. The clerk must keep among the records of the court a register of actions. He must enter therein the title of the action with brief notes under it, from time to time, of all papers filed and proceedings had therein. The register must also state the names of the attorneys and all fees charged in each action.

History: Ap. p. Sec. 499, p. 233, L. 1867; re-en. Sec. 576, p. 153, Cod. Stat. 1871; re-en. Sec. 517, p. 176, L. 1877; re-en. Sec. 517, 1st Div. Rev. Stat. 1879; re-en. Sec. 534, 1st Div. Comp. Stat. 1887; re-en. Sec. 1896, C. Civ. Proc. 1895; re-en. Sec. 7189, Rev. C. 1907; re-en. Sec. 9822, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1052; re-en. Sec. 9822, R.C.M. 1935; Sec. 93-8707, R.C.M. 1947; Ap. p. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; Sec. 16-3001, R.C.M. 1947; R.C.M. 1947, 16-3001(part), 93-8707.

3-5-505. Register of criminal actions. The clerk of the district court shall keep a book called "Register of Criminal Actions", which must have a proper index and in which must be entered the title and number of the action with a memorandum of every paper filed and order or proceeding had therein, with the date thereof, and a memorandum of the name of every witness, the number of days he attended, and his witness fees.

History: En. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; R.C.M. 1947, 16-3001(part).

3-5-506. Index of bonds in criminal cases. Clerks of the district courts of the counties in the state of Montana shall keep proper books for indexing bonds given in criminal cases. All bonds filed therein shall be entered showing the title and docket number of the case in which such bond is filed, the names of principals and sureties on such bonds in alphabetical order, the date and amount of the bond, and upon its release, the date of the order or authority for such release.

History: En. Sec. 1, Ch. 47, L. 1923; re-en. Sec. 4818.1, R.C.M. 1935; R.C.M. 1947, 16-3005.

3-5-507. Judgment book. The clerk must keep with the records of the court a book to be called the "Judgment Book", in which judgments must be entered.

History: En. Sec. 201, p. 174, L. 1867; re-en. Sec. 241, p. 77, Cod. Stat. 1871; re-en. Sec. 292, p. 115, L. 1877; re-en. Sec. 292, 1st Div. Rev. Stat. 1879; re-en. Sec. 304, 1st Div. Comp. Stat. 1887; amd. Sec. 1194, C. Civ. Proc. 1895; re-en. Sec. 6804, Rev. C. 1907; re-en. Sec. 9407, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 668; re-en. Sec. 9407, R.C.M. 1935; R.C.M. 1947, 93-5705.

3-5-508. Docket. The docket is a book which the clerk keeps in his office, with each page divided into eight columns and headed as follows: judgment debtors; judgment creditors; judgment, time of entry; where entered in judgment book; appeals, when taken; judgment of appellate court; satisfaction of judgment, when entered. If judgment be for the recovery of money or damages, the amount must be stated in the docket under the head of judgment. If the judgment be for any other relief, a memorandum of the general character of the relief granted must be stated. The names of the defendants must be entered in alphabetical order.

History: En. Sec. 205, p. 174, L. 1867; re-en. Sec. 245, p. 78, Cod. Stat. 1871; re-en. Sec. 296, p. 116, L. 1877; re-en. Sec. 296, 1st Div. Rev. Stat. 1879; re-en. Sec. 308, 1st Div. Comp. Stat. 1887; re-en. Sec. 1198, C. Civ. Proc. 1895; re-en. Sec. 6808, Rev. C. 1907; re-en. Sec. 9411, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 672; re-en. Sec. 9411, R.C.M. 1935; R.C.M. 1947, 93-5709.

3-5-509. Docket to be available for inspection. The docket kept by the clerk is open at all times during office hours for the inspection of the public, without charge. The clerk must arrange the several dockets kept by him in such a manner as to facilitate their inspection.

History: En. Sec. 206, p. 174, L. 1867; re-en. Sec. 246, p. 78, Cod. Stat. 1871; re-en. Sec. 297, p. 116, L. 1877; re-en. Sec. 297, 1st Div. Rev. Stat. 1879; re-en. Sec. 309, 1st Div. Comp. Stat. 1887; re-en. Sec. 1199, C. Civ. Proc. 1895; re-en. Sec. 6809, Rev. C. 1907; re-en. Sec. 9412, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 673; re-en. Sec. 9412, R.C.M. 1935; R.C.M. 1947, 93-5711.

3-5-510. Duties relating to jurors and witnesses. The clerk of the district court shall:

(1) keep a book called "Book of Jurors' Certificates", which must contain the blank certificates and stubs to be filled as provided in 3-15-204;

(2) keep a "Witness Book", which must contain blank certificates and stubs to be filled as provided in 3-5-511;

(3) keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage (the distance from any point to the county seat must be determined by the shortest traveled route).

History: Ap. p. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; Sec. 16-3001, R.C.M. 1947; Ap. p. Sec. 4645, Pol. C. 1895; re-en. Sec. 3179, Rev. C. 1907; re-en. Sec. 4937, R.C.M. 1921; re-en. Sec. 4937, R.C.M. 1935; Sec. 25-405, R.C.M. 1947; Ap. p. Sec. 4651, Pol. C. 1895; re-en. Sec. 3185, Rev. C. 1907; re-en. Sec. 4940, R.C.M. 1921; re-en. Sec. 4940, R.C.M. 1935; Sec. 25-408, R.C.M. 1947; R.C.M. 1947, 16-3001(part), 25-405(part), 25-408.

3-5-511. Procedure in reference to witnesses' certificates. (1) The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk must give to each witness a certificate taken from a book containing a stub with like designations, signed by the clerk under seal, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) On presentation of such certificate to the county treasurer, the amount specified in the certificate must be paid out of the general fund.

History: En. Sec. 4649, Pol. C. 1895; re-en. Sec. 3183, Rev. C. 1907; re-en. Sec. 4938, R.C.M. 1921; re-en. Sec. 4938, R.C.M. 1935; R.C.M. 1947, 25-406.

3-5-512. Statement to board of county commissioners concerning witnesses. The clerk must make a detailed statement containing a list of the witnesses and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid to the clerk until such statement is filed. The board must examine the statement and see that it is correct.

History: En. Sec. 4650, Pol. C. 1895; re-en. Sec. 3184, Rev. C. 1907; re-en. Sec. 4939, R.C.M. 1921; re-en. Sec. 4939, R.C.M. 1935; R.C.M. 1947, 25-407.

3-5-513. Probate records. The clerk of the district court shall:

(1) keep a book called "Record of Probate Proceedings", which must contain all the orders and proceedings of the district court sitting in probate matters and must be indexed in the names of the deceased person or ward;

(2) keep a book called "Register of Probate and Guardianship Proceedings", in which must be entered the name of the estate and the register number with a memorandum of every paper filed and order or proceeding had therein, with the date thereof, and a memorandum of the fees charged.

History: En. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; R.C.M. 1947, 16-3001(part); amd. Sec. 4, Ch. 104, L. 1981.

Compiler's Comments

1981 Amendment: Deleted executor, administrator, and guardian from those names to be indexed in (1); deleted subsection (2) requiring "Probate Record Book" for wills, bonds, and other papers.

3-5-514. Naturalization records. The clerk of the district court shall keep two books:

(1) The first book must be labeled "Declarations of Intention to Become a Citizen of the United States" and must have entered in it, in alphabetical order, the name of each person who from the organization of the court has declared his intention to become a citizen of the United States, with the date of such declaration.

(2) The second book must be labeled "Naturalization—Final Papers" and must have entered in it, in alphabetical order, the name of each person who has been admitted as a citizen of the United States by the court of which he is clerk and, in a separate column opposite each name, the country of which the person was formerly a citizen or subject, the date of his admission, and the page of the minute book or book of record containing the order admitting him as a citizen.

History: En. Sec. 4440, Pol. C. 1895; re-en. Sec. 3048, Rev. C. 1907; re-en. Sec. 4815, R.C.M. 1921; Cal. Pol. C. Sec. 4204; re-en. Sec. 4815, R.C.M. 1935; amd. Sec. 10, Ch. 344, L. 1977; R.C.M. 1947, 16-3001(part); amd. Sec. 19, Ch. 21, L. 1979.

3-5-515. Fees for naturalization. The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, all fees authorized by law. All fees must be accounted for and paid to the county treasurer, as provided by 7-4-2511(1), and shall be credited to the general fund of the county.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 3146, Rev. C. 1907; re-en. Sec. 4894, R.C.M. 1921; re-en. Sec. 4894, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1967; amd. Sec. 1, Ch. 171, L. 1969; R.C.M. 1947, 25-210.

Part 6

Court Reporters

3-5-601. Appointment — oath. The judge of a district court may appoint a reporter for such court who is an officer of the court and holds his office during the pleasure of the judge appointing him. He must subscribe the constitutional oath of office and file the same with the clerk of the court. In districts where there are two or more judges, each judge may appoint a reporter.

History: Earlier acts were Secs. 1-3, pp. 393, 394, L. 1877; re-en. Secs. 1176-1178, 5th Div. Rev. Stat. 1879; amd. Secs. 1977-1981, 5th Div. Comp. Stat. 1887.

This section en. Sec. 370, C. Civ. Proc. 1895; re-en. Sec. 6373, Rev. C. 1907; re-en. Sec. 8928, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 269; re-en. Sec. 8928, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1961; R.C.M. 1947, 93-1901.

3-5-602. Salary and expenses — apportionment. (1) Each reporter is entitled to receive an annual salary of not less than $14,000 or more than $20,000 and no other compensation except as provided in 3-5-604. The salary shall be set by the judge in the district in which the reporter works. It is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed. Each county shall pay its portion of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the district in the preceding year. The judge of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in his district on the basis prescribed in this subsection.

(2) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto. The expenses shall be apportioned and payable in the same way as the salary.

History: En. Sec. 375, C. Civ. Proc. 1895; re-en. Sec. 6378, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1909; re-en. Sec. 8933, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 271 and 274; amd. Sec. 1, Ch. 36, L. 1927; re-en. Sec. 8933, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1945; amd. Sec. 1, Ch. 49, L. 1951; amd. Sec. 1, Ch. 125, L. 1953; amd. Sec. 1, Ch. 76, L. 1955; amd. Sec. 6, Ch. 22, L. 1961; amd. Sec. 1, Ch. 114, L. 1965; amd. Sec. 1, Ch. 221, L. 1967; amd. Sec. 1, Ch. 192, L. 1969; amd. Sec. 1, Ch. 183, L. 1973; amd. Sec. 1, Ch. 373, L. 1975; amd. Sec. 45, Ch. 344, L. 1977; R.C.M. 1947, 93-1906; amd. Sec. 7, Ch. 528, L. 1979; amd. Sec. 1, Ch. 647, L. 1979; amd. Sec. 1, Ch. 316, L. 1981.

Compiler's Comments

1981 Amendment: Increased the district court reporter's salary from between $12,500 and $18,000 to between $14,000 and $20,000; inserted "Each county shall pay its portion of the salary based on its" after "appointed" in (1); inserted "of the total" before "number of civil and criminal actions" in (1); substituted "courts" for "court" after "district" in (1); substituted "in the district" for "in and for each county" after "district courts" in (1); made minor changes in phraseology.

Transition: Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability: Sec. 17, Ch. 528, L. 1979, was a severability section.

3-5-603. Duties. (1) Each reporter must, under the direction of the judge, attend all sittings of the court and take full stenographic notes of the testimony and of all proceedings given or had thereat except when the judge dispenses with his services in a particular cause or with respect to a portion of the proceedings therein. The reporter must file with the clerk forthwith the original stenographic notes taken upon a trial or hearing required to be taken by this subsection.

(2) All objections made during the trial or hearing and the rulings, decisions, and opinions of the court must be written out at length or printed in type by the reporter and filed with the clerk immediately after the close of the trial or hearing.

History: Ap. p. Sec. 371, C. Civ. Proc. 1895; re-en. Sec. 6374, Rev. C. 1907; re-en. Sec. 8929, R.C.M. 1921; re-en. Sec. 8929, R.C.M. 1935; amd. Sec. 2, Ch. 22, L. 1961; Sec. 93-1902, R.C.M. 1947; Ap. p. Sec. 372, C. Civ. Proc. 1895; re-en. Sec. 6375, Rev. C. 1907; re-en. Sec. 8930, R.C.M.

1921; Cal. C. Civ. Proc. Sec. 269; re-en. Sec. 8930, R.C.M. 1935; amd. Sec. 3, Ch. 22, L. 1961; amd. Sec. 43, Ch. 344, L. 1977; Sec. 93-1903, R.C.M. 1947; R.C.M. 1947, 93-1902, 93-1903.

3-5-604. Copies of proceedings. (1) Each reporter must furnish, upon request, with all reasonable diligence, to the defendant in a criminal case or a party or his attorney in a civil case in which he has attended the trial or hearing a copy, written out at length or in narrative form from his stenographic notes, of the testimony and proceedings upon the trial or hearing or a part thereof, upon payment by the person requiring the same of 10 cents per folio.

(2) If the county attorney, attorney general, or judge requires a copy in a criminal case, the reporter is entitled to his fees therefor, but he must furnish it. Upon furnishing it, he shall receive a certificate of the sum to which he is so entitled, which is a county charge and must be paid by the county treasurer upon the certificate like other county charges.

(3) If the judge requires a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. In civil cases, all transcripts required by the county shall be furnished without cost.

(4) If it appears to the judge that a defendant in a criminal case is unable to pay for a copy, it shall be furnished to him and paid for by the county.

History: En. Sec. 373, C. Civ. Proc. 1895; re-en. Sec. 6376, Rev. C. 1907; re-en. Sec. 8931, R.C.M. 1921; re-en. Sec. 8931, R.C.M. 1935; amd. Sec. 4, Ch. 22, L. 1961; amd. Sec. 1, Ch. 163, L. 1963; amd. Sec. 44, Ch. 344, L. 1977; R.C.M. 1947, 93-1904; amd. Sec. 1, Ch. 295, L. 1981.

Compiler's Comments

1981 Amendment: Increased folio cost from 7 ½ to 10 cents in (1).

3-5-605 through 3-5-610 reserved.

3-5-611. Reporter pro tempore. (1) The reporter of any district court must attend to the duties of his office in person except when excused for good and sufficient reason by order of the court, which order must be entered upon the minutes of the court. Employment in his professional capacity elsewhere is not a good and sufficient reason for such excuse.

(2) When the reporter of any court has been excused in the manner provided in this section, the court may appoint a reporter pro tempore, who must take the same oath and perform the same duties and receive the same compensation during the time of his employment as the regular reporter.

History: En. Sec. 376, C. Civ. Proc. 1895; re-en. Sec. 6379, Rev. C. 1907; re-en. Sec. 8934, R.C.M. 1921; re-en. Sec. 8934, R.C.M. 1935; amd. Sec. 7, Ch. 22, L. 1961; R.C.M. 1947, 93-1907.

3-5-612. Reporter's report prima facie evidence. The report of the reporter or reporter pro tempore of any court, duly appointed and sworn, when written out in longhand or printed in type and certified as being a correct transcript of the testimony and proceedings in the case, is prima facie a correct statement of such testimony and proceedings.

History: En. Sec. 377, C. Civ. Proc. 1895; re-en. Sec. 6380, Rev. C. 1907; re-en. Sec. 8935, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 273; re-en. Sec. 8935, R.C.M. 1935; amd. Sec. 8, Ch. 22, L. 1961; R.C.M. 1947, 93-1908.

CHAPTER 6

MUNICIPAL COURTS

Part 1 — General Provisions

Section
3-6-101. Establishment of the court.
3-6-102. Abolition of city court.
3-6-103. Jurisdiction.
3-6-104. Powers and duties of the court.
3-6-105. Courtroom and supplies.
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Part 2 — Municipal Court Judges

3-6-201. Election — term of office.
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3-6-203. Salary.
3-6-204. Disqualification — judge pro tem.

Part 3 — Conduct of Court Business

3-6-301. Clerk of the court.
3-6-302. Records.
3-6-303. Officers of the court.

Part 1

General Provisions

3-6-101. Establishment of the court. (1) All cities in the state of Montana with a population of 10,000 or more, according to the last federal census, may have a court known as the municipal court of the city of (designating the name of the city) of the state of Montana. The court shall be a court of record.

(2) The provisions of this chapter apply only after the governing body of the city has elected by a two-thirds majority vote to adopt them by ordinance and, in the ordinance, has provided the manner in which and time when the municipal court is to be established and assume continuing jurisdiction over all pending city court cases. The ordinance must be consistent with the provisions of this chapter.

History: **En. Sec. 1, Ch. 177, L. 1935; re-en. Sec. 5094.1, R.C.M. 1935; amd. Sec. 1, Ch. 429, L. 1977; R.C.M. 1947, 11-1701.**

3-6-102. Abolition of city court. In cities in which a municipal court is established, the office of city judge is hereby abolished.

History: **En. Sec. 16, Ch. 177, L. 1935; re-en. Sec. 5094.16, R.C.M. 1935; R.C.M. 1947, 11-1716.**

3-6-103. Jurisdiction. Said court shall have jurisdiction coordinate and coextensive with the justices' courts of the county wherein said city is located and shall, in addition thereto, have exclusive original jurisdiction of all actions and proceedings, both civil and criminal, mentioned and provided for in 3-11-103. Such municipal courts shall also have concurrent jurisdiction with the district court within their respective counties in forcible entry and unlawful detainer.

History: En. Sec. 2, Ch. 177, L. 1935; re-en. Sec. 5094.2, R.C.M. 1935; R.C.M. 1947, 11-1702.

3-6-104. Powers and duties of the court. (1) Except as otherwise provided by this chapter, chapter 30 of Title 25, and part 4 of chapter 17 of Title 46, the municipal court shall have in matters within its jurisdiction all the powers and duties of district judges in like cases. The court may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The municipal court shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.

History: (1)En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; Sec. 11-1719, R.C.M. 1947; (2)En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; Sec. 11-1717, R.C.M. 1947; R.C.M. 1947, 11-1717(3), 11-1719(part).

3-6-105. Courtroom and supplies. A room for the municipal court, with necessary furniture, fixtures, and supplies, shall be provided by the city wherein the court is located.

History: En. Sec. 5, Ch. 177, L. 1935; re-en. Sec. 5094.5, R.C.M. 1935; amd. Sec. 5, Ch. 429, L. 1977; R.C.M. 1947, 11-1705.

3-6-106. Sessions of the court. The municipal court shall be in continuous session from 9 a.m. to noon and from 1 p.m. to 4 p.m. on every day except nonjudicial days. The judge may designate additional hours as he, in his discretion, sees fit.

History: En. Sec. 8, Ch. 177, L. 1935; re-en. Sec. 5094.8, R.C.M. 1935; amd. Sec. 6, Ch. 429, L. 1977; R.C.M. 1947, 11-1708.

Part 2

Municipal Court Judges

3-6-201. Election — term of office. (1) One judge of each municipal court shall be elected at the general city election. The judge's term shall commence on the first Monday in January following the election. The judge shall hold office for the term of 4 years and until his successor is elected and qualified.

(2) All elections of municipal judges are governed by the laws applicable to the election of nonpartisan city officials.

History: En. Sec. 3, Ch. 177, L. 1935; re-en. Sec. 5094.3, R.C.M. 1935; amd. Sec. 2, Ch. 429, L. 1977; R.C.M. 1947, 11-1703; amd. Sec. 376, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

3-6-202. Qualifications. A municipal court judge must have the same qualifications as a judge of a district court, as set forth in Article VII, section 9, of the 1972 Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least 2 years prior to the date of appointment or election. A municipal court judge must be a resident and voter in the city in which he is elected at the time of his election.

History: **En. Sec. 4, Ch. 177, L. 1935; re-en. Sec. 5094.4, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1974; amd. Sec. 3, Ch. 429, L. 1977; R.C.M. 1947, 11-1704(1).**

3-6-203. Salary. The salary of the municipal court judge shall be set by city ordinance and shall be payable monthly by the city treasurer. Actual and necessary expenses for the municipal court judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties.

History: **En. Sec. 4, Ch. 177, L. 1935; re-en. Sec. 5094.4, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1974; amd. Sec. 3, Ch. 429, L. 1977; R.C.M. 1947, 11-1704(2); amd. Sec. 8, Ch. 528, L. 1979.**

Compiler's Comments

Transition. Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability. Sec. 17, Ch. 528, L. 1979, was a severability section.

3-6-204. Disqualification — judge pro tem. When a judge of a municipal court has been disqualified or is sick or unable to act, he shall call in some practicing attorney of the county in which his court is located, who shall be judge pro tem with the same powers for the purposes of the cause as the judge of the court.

History: **En. Sec. 13, Ch. 177, L. 1935; re-en. Sec. 5094.13, R.C.M. 1935; R.C.M. 1947, 11-1713; amd. Sec. 20, Ch. 21, L. 1979.**

Part 3

Conduct of Court Business

3-6-301. Clerk of the court. The city clerk of the city in which said court is located shall be ex officio clerk of such court.

History: **En. Sec. 6, Ch. 177, L. 1935; re-en. Sec. 5094.6, R.C.M. 1935; R.C.M. 1947, 11-1706(part).**

3-6-302. Records. The records of the court shall be kept by the clerk. Such records in civil causes shall conform as nearly as possible to the records of district courts. In criminal causes, in cases arising under city ordinances, and in cases mentioned in 3-11-103, the records shall be similar to the records now kept in justices' courts.

History: **En. Sec. 6, Ch. 177, L. 1935; re-en. Sec. 5094.6, R.C.M. 1935; R.C.M. 1947, 11-1706(part); amd. Sec. 21, Ch. 21, L. 1979.**

3-6-303. Officers of the court. (1) The chief of police of the city shall be the executive officer of such court. He shall serve all process and execute all orders of the court, either in person or by subordinate police officer, who shall execute process in his name.

(2) The chief of police, with the approval of the judge, shall appoint one or more policemen as court officers, one of whom shall attend the sessions

of the court and perform all duties in connection therewith which the judge may require.

History: En. Sec. 7, Ch. 177, L. 1935; re-en. Sec. 5094.7, R.C.M. 1935; R.C.M. 1947, 11-1707.

CHAPTER 7

WATER COURTS

Part 1 — Water Divisions

Section
3-7-101. Water divisions.
3-7-102. Water divisions boundaries.
3-7-103. Promulgation of rules and prescription of forms.

Part 2 — Water Judges

3-7-201. Designation of water judge.
3-7-202. Term of office.
3-7-203. Vacancies.
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Sections 3-7-205 through 3-7-210 reserved.
3-7-211. Appointment of water commissioners.
3-7-212. Enforcement of final decree.
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Sections 3-7-214 through 3-7-220 reserved.
3-7-221. Appointment of chief water judge — term of office.
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3-7-501. Jurisdiction.
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Part 1

Water Divisions

3-7-101. Water divisions. To adjudicate existing water rights water divisions are established as defined in 3-7-102. A water division shall be presided over by a water judge.

History: En. Sec. 1, Ch. 697, L. 1979.

Compiler's Comments

Purpose. Subsection (1) of sec. 1, Ch. 697, L. 1979, provided: "[This act] amends the Montana Water Use Act to expedite and facilitate the adjudication of existing water rights."

Codification. Sec. 35, Ch. 697, L. 1979, provided: "(1) Sections 1 through 10 of this act are intended to be codified as an integral part of Title 3, and the provisions contained in Title 3 apply to this act.

(2) Sections 11 through 27 are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions contained in Title 85, chapter 2, apply to this act.

(3) If the provisions of this act are not codified as stated above, the code commissioner shall add to the MCA, if necessary, statutory language to convey the intent of this section."

Because of rearrangement of the new material, Ch. 697 is now codified in Title 3, chapter 7; Title 85, chapter 2, parts 2 and 7; and 2-15-212.

Effective date. "This act is effective on passage and approval." Approved May 11, 1979.

Severability. Section 36, Ch. 697, L. 1979, was a severability section.

3-7-102. Water divisions boundaries. There are four water divisions whose boundaries are formed by the natural divides between drainages and the borders of the state of Montana and which are described as follows:

(1) The Yellowstone River Basin water division consists of those areas drained by the Yellowstone and Little Missouri Rivers and any remaining areas in Carter County.

(2) The lower Missouri River Basin water division consists of those areas drained by the Missouri River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan Counties.

(3) The upper Missouri River Basin water division consists of those areas drained by the Missouri River to below the mouth of the Marias River.

(4) The Clark Fork River Basin water division consists of the areas drained by the Clark Fork River, the Kootenai River, and any remaining areas in Lincoln County.

History: En. Sec. 2, Ch. 697, L. 1979.

3-7-103. Promulgation of rules and prescription of forms. As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in consultation with the water judge and the department of natural resources and conservation.

History: En. Sec. 10, Ch. 697, L. 1979; amd. Sec. 16, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Added "of natural resources and conservation" at the end of the section.

Part 2

Water Judges

3-7-201. Designation of water judge. (1) A water judge shall be designated within 30 days after May 11, 1979, for each water division by a majority vote of a committee composed of the district judge from each single judge judicial district and the chief district judge from each multiple judge judicial district, wholly or partly within the division. Except as provided in subsection (2) and 3-7-213, a water judge must be a district judge or retired district judge of a judicial district wholly or partly within the water division.

(2) A district judge or retired district judge may sit as a water judge in more than one division if requested by the chief justice of the supreme court or the water judge of the division in which he is requested to sit.

(3) A water judge, when presiding over a water division, presides as district judge in and for each judicial district wholly or partly within the water division.

History: En. Sec. 1, Ch. 697, L. 1979; amd. Sec. 1, Ch. 80, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 80, L. 1981 (SB 94), read: "An act to provide that a water judge may be a retired district judge; to provide that a water judge may resign; and to permit a district judge or retired district judge to sit as a water judge in more than one division when called by the chief justice or another water judge."

1981 Amendment: Inserted the exception in (1) and inserted "or retired district judge"; in (2) inserted "or retired district judge" and "if requested by the chief justice of the supreme court or the water judge of the division in which he is requested to sit".

Effective Date: Section 6, Ch. 80, L. 1981, provided: "This act is effective on passage and approval." Approved March 18, 1981.

3-7-202. Term of office. The term of office for water judges is from the date of initial appointment as provided in 3-7-201 to June 30, 1985. After June 30, 1985, the term of office of a water judge is 4 years, subject to continuation of the water divisions by the legislature.

History: En. Sec. 9, Ch. 697, L. 1979.

3-7-203. Vacancies. If a vacancy occurs, it shall be filled in the manner provided in 3-7-201 for the initial designation of a water judge. A vacancy is created when a water judge dies, resigns, retires, is not elected to a subsequent term, forfeits his judicial position, is removed, or is otherwise unable to complete his term as a water judge.

History: En. Sec. 8, Ch. 697, L. 1979; amd. Sec. 2, Ch. 80, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "resigns" near middle of section and substituted "water judge" for "district judge".

3-7-204. Supervision and administration by supreme court. (1) The Montana supreme court shall supervise the activities of the water judges, water masters, and associated personnel in implementing this chapter and Title 85, chapter 2, part 2.

(2) The supreme court shall pay the expenses of the water judges and the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from the water rights adjudication account established by 85-2-241. "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and such other necessary expenses as may be incurred in the administration of this chapter and Title 85, chapter 2, part 2.

History: En. Sec. 1, Ch. 268, L. 1981.

Compiler's Comments

Codification Instruction: Section 10, Ch. 268, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 3, chapter 7, part 2, and the provisions of section 1 apply to Title 3, chapter 7."

Effective Date: Section 11, Ch. 268, L. 1981, provided: "This act is effective on passage and approval." Approved April 3, 1981.

3-7-205 through 3-7-210 reserved.

3-7-211. Appointment of water commissioners. The water judge of each water division may appoint and supervise a water commissioner as provided for in Title 85, chapter 5.

History: **En. Sec. 6, Ch. 697, L. 1979.**

3-7-212. Enforcement of final decree. The water judge of each water division may enforce the provisions of a final decree issued in that water division as provided in 85-2-234.

History: **En. Sec. 6, Ch. 697, L. 1979.**

3-7-213. Designation of alternate judge. The water judge may designate any other district judge or retired district judge to preside in his absence on his behalf as water judge for the immediate enforcement of an existing decree or the immediate granting of extraordinary relief as may be provided for by law upon an allegation of irreparable harm.

History: **En. Sec. 6, Ch. 697, L. 1979; amd. Sec. 3, Ch. 80, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "or retired district judge"; deleted "within the water division" following "district judge".

3-7-214 through 3-7-220 reserved.

3-7-221. Appointment of chief water judge — term of office. (1) The chief justice of the Montana supreme court shall appoint a chief water judge from among the district judges serving or retired as of the time of appointment.

(2) The term of office of the chief water judge is from the date of initial appointment until June 30, 1985. After June 30, 1985, the term of office is 4 years, subject to continuation of the water divisions by the legislature.

History: **En. Sec. 1, Ch. 442, L. 1981.**

Compiler's Comments

Initial Appointment: Section 5, Ch. 442, L. 1981, provided: "The chief justice of the Montana supreme court shall make the initial appointment of a chief water judge on or before January 4, 1983."

3-7-222. Salary — office space. (1) The chief water judge is entitled to receive the same salary and expense allowance as provided for district judges in 3-5-211.

(2) The office of the chief water judge shall be at the location that the chief justice of the Montana supreme court shall designate. The Montana supreme court shall provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge, which money may be appropriated by the legislature from the water rights adjudication account.

History: **En. Sec. 2, Ch. 442, L. 1981.**

3-7-223. Duties of the chief water judge. The chief water judge shall:

(1) coordinate with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;

(2) assure that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree; and

(3) assure that any contested or conflicting claims are tried and adjudicated as expeditiously as possible.

History: **En. Sec. 3, Ch. 442, L. 1981.**

3-7-224. Jurisdiction of chief water judge. (1) The chief water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water judge for one of the water divisions.

(2) The chief water judge has jurisdiction over all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the determination of existing water rights, the chief water judge has the same powers as a district judge. He may issue such orders, on the motion of an interested party or on his own motion, as may reasonably be required to allow him to fulfill his responsibilities.

History: **En. Sec. 4, Ch. 442, L. 1981.**

Part 3

Water Masters

3-7-301. Appointment of water masters — removal. (1) The water judge in each water division shall appoint at least one water master and may appoint more than one water master.

(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

(3) In appointing a water master, the water judge shall consider a potential master's experience with water law, water use, and water rights.

(4) A water master shall serve at the pleasure of the water judge and may be removed by the water judge.

History: **En. Sec. 3, Ch. 697, L. 1979; amd. Sec. 2, Ch. 268, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "at least one" for "a" in (1); added "and may appoint more than one water master" at the end of (1).

Effective Date: Section 11, Ch. 268, L. 1981, provided: "This act is effective on passage and approval." Approved April 3, 1981.

3-7-302. Salary, expenses, and retirement of water masters. (1) The water judges shall set a uniform salary for water masters. Water masters shall receive expenses as provided in 2-18-501 through 2-18-503.

(2) A water master shall participate in the Montana Public Employees' Retirement System established in Title 19, chapter 3.

(3) The salary and expenses of a water master shall be paid from the water right adjudication account established in 85-2-241.

History: **En. Sec. 4, Ch. 697, L. 1979.**

3-7-303 through 3-7-310 reserved.

3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by M.R.Civ.P., Rule 53(c).

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

History: **En. Sec. 5, Ch. 697, L. 1979.**

Part 4

Disqualification

3-7-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Proceeding" includes prehearing, hearing, appellate review, or other stages of adjudication conducted by the water master or water judge.

(2) "Fiduciary" includes such relationships as executor, administrator, trustee, or guardian.

(3) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(a) ownership in a mutual or common investment fund that holds securities is not a financial interest in such securities unless the judge or water master participates in the management of the fund;

(b) an office in an educational, religious, charitable, fraternal, or civic organization is not a financial interest in securities held by the organization;

(c) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a financial interest in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

(d) ownership of government securities is a financial interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

History: **En. Sec. 7, Ch. 697, L. 1979.**

3-7-402. Disqualification of water judge or master. (1) A water judge may disqualify himself or the water master in any proceeding or pertinent portion thereof in which his or the water master's impartiality might reasonably be questioned.

(2) A water judge may also disqualify himself or the water master in the following circumstances:

(a) if he or the water master has a personal bias or prejudice concerning a party of personal knowledge or disputed evidentiary facts concerning the proceeding;

(b) if in private practice he or the water master served as a lawyer in the matter in controversy or a lawyer with whom he or the water master previously practiced law served during such association as a lawyer concerning the matter or the judge or the lawyer has been a material witness concerning it;

(c) if he or the water master has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) if he or the water master knows that he or the water master individually or as a fiduciary, or his or the water master's spouse or minor child residing in his or the water master's household has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding; or

(e) if he or the water master or his or the water master's spouse or a person within the third degree of relationship to any of them (as calculated according to 72-11-101 through 72-11-105) or the spouse of such a person:

(i) is a party to the proceeding or an officer, director, or trustee of a party;

(ii) is known by the judge or water master to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) is to the judge's or water master's knowledge likely to be a material witness in the proceeding.

(3) A water judge should inform himself about his and the water master's personal and fiduciary financial interests and make a reasonable effort to inform himself about the personal financial interests of his and the water master's spouse and minor children residing in his or the water master's respective household.

History: En. Sec. 7, Ch. 697, L. 1979.

3-7-403. Waiver of disqualification. A water judge may accept from the parties to the proceeding a waiver of any ground for disqualification if it is preceded by a full disclosure on the record of the basis for disqualification.

History: En. Sec. 7, Ch. 697, L. 1979.

3-7-404. Procedure exclusive. The procedure for disqualification of a water judge or water master specified in this section is exclusive unless otherwise specifically altered by the Montana supreme court.

History: En. Sec. 7, Ch. 697, L. 1979.

Part 5

Jurisdiction

3-7-501. Jurisdiction. (1) The jurisdiction of each judicial district concerning the determination and interpretation of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201 and 3-7-213.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning the determination and interpretation of existing water

rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division.

History: **En. Secs. 1, 6, Ch. 697, L. 1979; amd. Sec. 4, Ch. 80, L. 1981.**

Compiler's Comments

1981 Amendment: Added the exception at the end of (2).

3-7-502. Jurisdictional disputes. Whenever a question arises concerning which water judge shall preside over adjudication of a matter concerning the determination and interpretation of existing water rights, the question shall be settled by the water judges involved.

History: **En. Sec. 2, Ch. 697, L. 1979.**

CHAPTERS 8 AND 9

RESERVED

CHAPTER 10

JUSTICES' COURTS

Part 1 — General Provisions

Section
3-10-101. Number and location of justices' courts — authorization to combine with city court.
3-10-102. When courts open.
3-10-103. County to provide facilities.
Sections 3-10-104 through 3-10-110 reserved.
3-10-111. What provisions of code applicable to justices' courts.

Part 2 — Justices of the Peace

3-10-201. Election.
3-10-202. Oath — qualifications.
3-10-203. Orientation course — annual training.
3-10-204. Residence requirements.
3-10-205. Term of office.
3-10-206. Vacancies.
3-10-207. Salaries.
3-10-208. Office hours.
3-10-209. Expenses.
Sections 3-10-210 through 3-10-220 reserved.
3-10-221. Duties of justices.
3-10-222. Collection and payment of moneys.
Sections 3-10-223 through 3-10-230 reserved.
3-10-231. Circumstances in which an acting justice called in — by whom.
3-10-232. Docket entries by acting justice.
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Part 3 — Jurisdiction of Justices' Courts

3-10-301. Civil jurisdiction.
3-10-302. Jurisdiction over forcible entry, unlawful detainer, and residential landlord-tenant disputes.
3-10-303. Criminal jurisdiction.

3-10-304. Territorial extent of civil jurisdiction.
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Part 6 — Fees and Costs in Justices' Courts

3-10-601. Collection and disposition of fees — itemized statement.
3-10-602. Penalty.
3-10-603. Costs in criminal actions.

Part 7 — Constables

3-10-701. Constables to attend court.
3-10-702. Governed by law prescribing sheriffs' duties.
3-10-703. Compensation.
3-10-704. Deputy constables.
3-10-705. Authority of deputy.
3-10-706. Execution of process by retiring constable.

Parts 8 and 9 reserved

Part 10 — Small Claims Division

3-10-1001. Purpose.
3-10-1002. Creation.
3-10-1003. Location — hours.
3-10-1004. Jurisdiction — removal from district court.
3-10-1005. Docket entries.

Part 1

General Provisions

3-10-101. Number and location of justices' courts — authorization to combine with city court. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat.

(2) The board of county commissioners of each county of the state shall have authority to constitute:

(a) as it considers necessary, one additional justice's court which may be located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A justice's court shall be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court constituted pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing such action and upon approval of the ordinance by resolution of the board of county commissioners. If such an ordinance and such a resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary as established under 3-10-207 and 3-11-202 and for proportionate reimbursement for the use of facilities.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(part); amd. Sec. 1, Ch. 56, L. 1981.

Compiler's Comments

1981 Amendment: Rewrote this section that formerly read: "(1) There must be at least one justice's court in each county of the state. The board of county commissioners of each county of the state shall have authority to constitute one additional justice's court in its respective county, as the board deems necessary.

(2) One justice's court in each county must be located at the county seat, and the board of county commissioners shall determine the location of the other justice's court in its respective county."

Cross-References

Justice of the peace as city judge, 3-11-205.

3-10-102. When courts open. A justice's court is always open for the transaction of business, except on legal holidays and nonjudicial days.

History: En. Sec. 61, C. Civ. Proc. 1895; re-en. Sec. 6280, Rev. C. 1907; re-en. Sec. 8834, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 104; amd. Sec. 1, Ch. 92, L. 1933; re-en. Sec. 8834, R.C.M. 1935; amd. Sec. 6, Ch. 491, L. 1973; amd. Sec. 3, Ch. 276, L. 1974; R.C.M. 1947, 93-402.

3-10-103. County to provide facilities. The board of county commissioners of the county in which the justice of the peace has been elected or appointed shall provide for the justice of the peace:

(1) the office, courtroom, and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(2) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary in the proper keeping of the records and files of the judicial office and the transaction of the business;

(3) the latest edition of the Montana Code Annotated and all official supplements thereto.

History: En. Sec. 3, Ch. 491, L. 1973; R.C.M. 1947, 93-412(1).

3-10-104 through 3-10-110 reserved.

3-10-111. What provisions of code applicable to justices' courts. Because justices' courts are courts of peculiar and limited jurisdiction, only those provisions of this code which are, in their nature, applicable to the organization, powers, and course of proceedings in justices' courts or which have been made applicable by special provisions in this chapter, chapter 31 of Title 25, and Title 27 are applicable to justices' courts and the proceedings therein.

History: En. Sec. 1686, C. Civ. Proc. 1895; re-en. Sec. 7084, Rev. C. 1907; re-en. Sec. 9717, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 925; re-en. Sec. 9717, R.C.M. 1935; amd. Sec. 52, Ch. 344, L. 1977; R.C.M. 1947, 93-7707; amd. Sec. 22, Ch. 21, L. 1979.

Part 2

Justices of the Peace

3-10-201. Election. (1) Each justice of the peace must be elected by the qualified electors of the county at the general state election next preceding the expiration of the term of office of his predecessor.

(2) A justice of the peace shall be nominated and elected on the nonpartisan judicial ballot in the same manner as are judges of the district court.

(3) Each judicial office shall be a separate and independent office for election purposes, and each office shall be numbered by the county commissioners, and each candidate for justice of the peace shall specify the number of the office for which he seeks to be elected. A candidate may not file for more than one office.

(4) Section 13-35-231, prohibiting political party endorsement for judicial officers, shall also apply to justices of the peace.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(part).

3-10-202. Oath — qualifications. (1) Each justice of the peace, elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, take the constitutional oath of office, which must be filed with the county clerk.

(2) Before the county clerk may file the oath, the elected or appointed justice must satisfy the clerk that he is either:

(a) an attorney at law authorized to practice law in the state of Montana;

(b) a person who has held the office of justice of the peace within the preceding 5 years; or

(c) a person who has completed the orientation course of study held under the direction of the university of Montana law school. If a person is appointed after the course is offered, he must agree to take the course at the next offering and failure to do so will disqualify him.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(3), (4).

3-10-203. Orientation course — annual training. (1) The university of Montana law school, under the supervision of the supreme court, shall present a course of study as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials shall be paid to the elected or appointed justice of the peace for attending the course by the county in which he holds or will hold court and shall be charged against that county.

(2) There shall be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials shall be paid to the elected or appointed justice of the peace for attending the sessions by the county in which he holds or will hold court and shall be charged against that county.

(3) Each justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies him from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

History: **En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 85; re-en. Sec. 8833, R.C.M. 1935; amd. Sec. 4, Ch. 491, L. 1973; amd. Sec. 1, Ch. 23, L. 1974; amd. Sec. 1, Ch. 276, L. 1974; amd. Sec. 9, Ch. 420, L. 1975; R.C.M. 1947, 93-401(5), (6); amd. Sec. 1, Ch. 466, L. 1979; amd. Sec. 9, Ch. 528, L. 1979.**

Compiler's Comments

Transition. Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability. Sec. 17, Ch. 528, L. 1979, was a severability section.

3-10-204. Residence requirements. (1) Every justice of the peace must reside in the county in which his court is held.

(2) No person is eligible to the office of justice of the peace unless he shall have been a citizen of the United States and a resident of the county in which he is to serve for 1 year next preceding his election or appointment.

History: **En. Sec. 163, C. Civ. Proc. 1895; re-en. Sec. 6311, Rev. C. 1907; re-en. Sec. 8865, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 159; re-en. Sec. 8865, R.C.M. 1935; amd. Sec. 13, Ch. 491, L. 1973; R.C.M. 1947, 93-704.**

3-10-205. Term of office. The term of office of justices of peace is 4 years from the first Monday in January next succeeding their election.

History: **En. Sec. 64, C. Civ. Proc. 1895; re-en. Sec. 6283, Rev. C. 1907; re-en. Sec. 8837, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 110; re-en. Sec. 8837, R.C.M. 1935; amd. Sec. 8, Ch. 491, L. 1973; R.C.M. 1947, 93-405.**

3-10-206. Vacancies. If a vacancy occurs in the office of a justice of the peace, the county commissioners of the county must appoint an eligible person to hold the office for the remainder of the unexpired term.

History: **En. Sec. 65, C. Civ. Proc. 1895; re-en. Sec. 6284, Rev. C. 1907; re-en. Sec. 8838, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 111; re-en. Sec. 8838, R.C.M. 1935; R.C.M. 1947, 93-406.**

3-10-207. Salaries. (1) The board of county commissioners shall set salaries for justices of the peace by resolution. Salaries must meet the minimum requirements established by this section.

(2) If the salary of the justice of the peace was determined on a fee basis for the years 1971 and 1972, he shall receive a monthly salary of not less

than one-eighteenth of the total fees, civil and criminal, collected by the justice or his predecessor in office during the 2 years 1971 and 1972.

(3) If the salary of the justice of the peace was determined on a nonfee basis for the years 1971 and 1972, the justice shall be paid not less than the highest salary earned by the justice or his predecessor for the years 1971 and 1972.

(4) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county, except as provided for in subsection (5).

(5) In the event his court is not open for business full time, the justice's salary shall be commensurate to the workload and office hours of the court.

History: **En. Sec. 1, Ch. 491, L. 1973; R.C.M. 1947, 93-413; amd. Sec. 1, Ch. 536, L. 1979.**

3-10-208. Office hours. In the resolution providing for the salary, the county commissioners shall designate the office hours for each justice. Office hours shall be commensurate with the salary provided.

History: **En. Sec. 2, Ch. 491, L. 1973; R.C.M. 1947, 93-414.**

3-10-209. Expenses. All actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred by the justice of the peace in the performance of his official duties are a legal charge against the county.

History: **En. Sec. 3, Ch. 491, L. 1973; R.C.M. 1947, 93-412(2); amd. Sec. 10, Ch. 528, L. 1979.**

3-10-210 through 3-10-220 reserved.

3-10-221. Duties of justices. Justices of the peace must perform such duties as are prescribed in this chapter, chapter 31 of Title 25, and Title 27 and any other duties prescribed by law.

History: **En. Sec. 4552, Pol. C. 1895; re-en. Sec. 3099, Rev. C. 1907; re-en. Sec. 4862, R.C.M. 1921; Cal. Pol. C. Sec. 4316; re-en. Sec. 4862, R.C.M. 1935; amd. Sec. 12, Ch. 344, L. 1977; R.C.M. 1947, 16-3604; amd. Sec. 23, Ch. 21, L. 1979.**

3-10-222. Collection and payment of moneys. Justices of the peace must receive from the sheriff or constable of their county all moneys collected on any process or order issued from their courts respectively and must pay the same and all moneys paid to them in their official capacity over to the parties entitled or authorized to receive them, without delay.

History: **En. Sec. 644, p. 171, Bannack Stat.; re-en. Sec. 749, p. 186, Cod. Stat. 1871; re-en. Sec. 809, 1st Div. Rev. Stat. 1879; re-en. Sec. 829, 1st Div. Comp. Stat. 1887; amd. Sec. 1682, C. Civ. Proc. 1895; re-en. Sec. 7080, Rev. C. 1907; re-en. Sec. 9713, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 921; re-en. Sec. 9713, R.C.M. 1935; R.C.M. 1947, 93-7703.**

3-10-223 through 3-10-230 reserved.

3-10-231. Circumstances in which an acting justice called in — by whom. (1) Whenever a justice of the peace is disqualified from acting in any action because of the application of the supreme court's rules on disqualification and substitution of judges, subdivision 1, 2, or 3, he shall either transfer the action to another justice's court in the same county or call a justice from a neighboring county to preside in his behalf.

(2) Whenever a justice is sick, disabled, or absent and the county commissioners find that there is a delay in the proper administration of justice

or the county attorney makes a written request, another justice, if there is one readily available, or a city judge or some other qualified person shall be called in to hold court for the absent justice until his return.

(3) During the time when a justice of the peace is on vacation or attending a training session, another justice of the peace of the same county shall be authorized to handle matters that otherwise would be handled by the absent justice. When there is no other justice of the peace in the county, the county commissioners shall handle the situation in the same manner as if the justice were sick or absent.

(4) A justice of the peace of any county may hold the court of any other justice of the peace at his request.

History: (1) thru (3)En. Sec. 626, p. 168, Bannack Stat.; re-en. Sec. 732, p. 184, Cod. Stat. 1871; re-en. Sec. 792, 1st Div. Rev. Stat. 1879; re-en. Sec. 812, 1st Div. Comp. Stat. 1887; amd. Sec. 1683, C. Civ. Proc. 1895; re-en. Sec. 7081, Rev. C. 1907; re-en. Sec. 9714, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 922; re-en. Sec. 9714, R.C.M. 1935; amd. Sec. 24, Ch. 491, L. 1973; amd. Sec. 17, Ch. 420, L. 1975; amd. Sec. 51, Ch. 344, L. 1977; Sec. 93-7704, R.C.M. 1947; (4)En. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975; Sec. 93-403, R.C.M. 1947; R.C.M. 1947, 93-403(part), 93-7704(1).

3-10-232. Docket entries by acting justice. When another justice or any other qualified person is called to preside in a justice's court, proper entries of all proceedings must be made in the docket of the justice for whom the visiting justice or person holds court. A justice holding court at the request of another justice must subscribe the entries. When the appointment is made by order of the county commissioners, the order shall be placed in the court docket.

History: En. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975; R.C.M. 1947, 93-7704(3).

3-10-233. Jurisdiction of acting justice. When called in to preside over a justice's court, the visiting justice of the peace or other qualified person while acting as justice of the peace is vested with all the power of the justice for whom he holds court.

History: En. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch. 420, L. 1975; R.C.M. 1947, 93-7704(4).

3-10-234. Expenses of acting justice. Whenever a justice of the peace or another person is called in to preside over the court of a justice under 3-10-231, the visiting justice or other person shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503. If the acting justice is not a justice of the peace receiving a salary, he shall also receive such compensation as is proper for the time involved. The cost of implementing this section is a proper charge against the county where the court is held.

History: Ap. p. Sec. 626, p. 168, Bannack Stat.; re-en. Sec. 732, p. 184, Cod. Stat. 1871; re-en. Sec. 792, 1st Div. Rev. Stat. 1879; re-en. Sec. 812, 1st Div. Comp. Stat. 1887; amd. Sec. 1683, C. Civ. Proc. 1895; re-en. Sec. 7081, Rev. C. 1907; re-en. Sec. 9714, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 922; re-en. Sec. 9714, R.C.M. 1935; amd. Sec. 24, Ch. 491, L. 1973; amd. Sec. 17, Ch. 420, L. 1975; amd. Sec. 51, Ch. 344, L. 1977; Sec. 93-7704, R.C.M. 1947; Ap. p. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 105; amd. Sec. 2, Ch. 92, L. 1933; re-en. Sec. 8835, R.C.M. 1935; amd. Sec. 7, Ch. 491, L. 1973; amd. Sec. 10, Ch.

420, L. 1975; Sec. 93-403, R.C.M. 1947; R.C.M. 1947, 93-403(part), 93-7704(2); amd. Sec. 11, Ch. 528, L. 1979.

Part 3

Jurisdiction of Justices' Courts

3-10-301. Civil jurisdiction. (1) Except as provided in subsection (2) and in 3-11-103, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed $3,500, exclusive of court costs;

(b) in actions for damages not exceeding $3,500, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding $3,500, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed $3,500;

(e) in actions for a fine, penalty, or forfeiture not exceeding $3,500, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed $3,500, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed $3,500, exclusive of court costs.

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money.

History: En. Sec. 546, p. 150, Bannack Stat.; amd. Sec. 655, p. 167, Cod. Stat. 1871; re-en. Sec. 715, 1st Div. Rev. Stat. 1879; amd. Sec. 1, p. 46, L. 1883; re-en. Sec. 735, 1st Div. Comp. Stat. 1887; amd. Sec. 66, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 76, L. 1907; re-en. Sec. 6286, Rev. C. 1907; re-en. Sec. 8840, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 112; re-en. Sec. 8840, R.C.M. 1935; amd. Sec. 11, Ch. 420, L. 1975; amd. Sec. 26, Ch. 344, L. 1977; R.C.M. 1947, 93-408; amd. Sec. 24, Ch. 21, L. 1979; amd. Sec. 3, Ch. 409, L. 1979; amd. Sec. 1, Ch. 348, L. 1981.

Compiler's Comments

1981 Amendment: Increased the jurisdictional limits from $1,500 to $3,500.

3-10-302. Jurisdiction over forcible entry, unlawful detainer, and residential landlord-tenant disputes. The justices' courts have concurrent jurisdiction with the district courts within their respective counties in actions of forcible entry and unlawful detainer and in actions brought under Title 70, chapter 24.

History: En. Sec. 67, C. Civ. Proc. 1895; re-en. Sec. 6287, Rev. C. 1907; re-en. Sec. 8841, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 113; re-en. Sec. 8841, R.C.M. 1935; amd. Sec. 12, Ch. 420, L. 1975; R.C.M. 1947, 93-409; amd. Sec. 1, Ch. 417, L. 1979.

3-10-303. Criminal jurisdiction. The justices' courts have jurisdiction of public offenses committed within the respective counties in which such courts are established as follows:

(1) jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months or both such fine and imprisonment, excluding jurisdiction in cases commenced under Title 45, chapter 9, except to act as examining and committing courts and to conduct preliminary hearings as provided in subsection (4);

(2) jurisdiction of all violations of fish and game statutes punishable by a fine of not more than $1,000 or imprisonment for not more than 6 months, or both;

(3) concurrent jurisdiction with district courts of all misdemeanors punishable by a fine only not exceeding $1,500; and

(4) jurisdiction to act as examining and committing courts and for such purpose to conduct preliminary hearings.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 11, Ch. 314, L. 1969; amd. Sec. 6, Ch. 465, L. 1977; Sec. 95-302, R.C.M. 1947; Ap. p. Sec. 68, C. Civ. Proc. 1895; re-en. Sec. 6288, Rev. C. 1907; re-en. Sec. 8842, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 115; re-en. Sec. 8842, R.C.M. 1935; amd. Sec. 13, Ch. 420, L. 1975; Sec. 93-410, R.C.M. 1947; R.C.M. 1947, 93-410, 95-302.

3-10-304. Territorial extent of civil jurisdiction. The civil jurisdiction of a justice's court extends to the limits of the county in which it is held, and mesne and final process of a justice's court in a county may be issued to and served in any part of the county. A summons of a justice's court may be served as provided in 25-31-407.

History: En. Sec. 550, p. 151, Bannack Stat.; re-en. Sec. 656, p. 167, Cod. Stat. 1871; re-en. Sec. 716, 1st Div. Rev. Stat. 1879; re-en. Sec. 736, 1st Div. Comp. Stat. 1887; amd. Sec. 63, C. Civ. Proc. 1895; re-en. Sec. 6282, Rev. C. 1907; re-en. Sec. 8836, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 106; re-en. Sec. 8836, R.C.M. 1935; R.C.M. 1947, 93-404; amd. Sec. 25, Ch. 21, L. 1979.

3-10-305. Territorial jurisdiction for subpoenas and final process. Justices of the peace may issue subpoenas in any action or proceeding in the courts held by them and final process on any judgment recovered therein to any part of the county.

History: En. Sec. 632, p. 168, Bannack Stat.; re-en. Sec. 738, p. 185, Cod. Stat. 1871; re-en. Sec. 798, 1st Div. Rev. Stat. 1879; re-en. Sec. 818, 1st Div. Comp. Stat. 1887; re-en. Sec. 1680, C. Civ. Proc. 1895; re-en. Sec. 7078, Rev. C. 1907; re-en. Sec. 9711, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 919; re-en. Sec. 9711, R.C.M. 1935; R.C.M. 1947, 93-7701.

3-10-306. Papers issued to be complete. The summons, execution, and other papers made or issued by a justice, except a subpoena, must be issued without a blank left to be filled by another; otherwise they are void.

History: En. Sec. 625, p. 167, Bannack Stat.; re-en. Sec. 731, p. 184, Cod. Stat. 1871; re-en. Sec. 791, 1st Div. Rev. Stat. 1879; re-en. Sec. 811, 1st Div. Comp. Stat. 1887; re-en. Sec. 1681, C. Civ. Proc. 1895; re-en. Sec. 7079, Rev. C. 1907; re-en. Sec. 9712, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 920; re-en. Sec. 9712, R.C.M. 1935; R.C.M. 1947, 93-7702.

Part 4

Contempts in Justices' Courts

3-10-401. Contempts a justice may punish for. A justice may punish for contempt persons guilty of the following acts and no other:

(1) disorderly, contemptuous, or insolent behavior toward the justice while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(2) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice or in the immediate vicinity of the court held by him tending to interrupt the due course of a trial or other judicial proceeding;

(3) disobedience or resistance to the execution of a lawful order or process made or issued by the justice;

(4) disobedience to a subpoena duly served or refusal to be sworn or to answer as a witness;

(5) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

History: **En. Sec. 1650, C. Civ. Proc. 1895; re-en. Sec. 7065, Rev. C. 1907; re-en. Sec. 9698, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 906; re-en. Sec. 9698, R.C.M. 1935; amd. Sec. 47, Ch. 344, L. 1977; R.C.M. 1947, 93-7501.**

3-10-402. Proceedings — contempt committed in presence of court. When a contempt is committed in the immediate view and presence of the justice, it may be punished summarily. To that end, an order must be made reciting the facts as they occurred and adjudging that the person proceeded against is thereby guilty of contempt and that he be punished as therein prescribed.

History: **En. Sec. 1651, C. Civ. Proc. 1895; re-en. Sec. 7066, Rev. C. 1907; re-en. Sec. 9699, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 907; re-en. Sec. 9699, R.C.M. 1935; R.C.M. 1947, 93-7502.**

3-10-403. Proceedings — contempt not in presence of court. When the contempt is not committed in the immediate view and presence of the justice, a warrant of arrest may be issued by such justice on which the person so guilty may be arrested and brought before the justice immediately, when an opportunity to be heard in his defense or excuse must be given. The justice may thereupon discharge him or may convict him of the offense.

History: **En. Sec. 1652, C. Civ. Proc. 1895; re-en. Sec. 7067, Rev. C. 1907; re-en. Sec. 9700, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 908; re-en. Sec. 9700, R.C.M. 1935; R.C.M. 1947, 93-7503.**

3-10-404. Punishment. A justice may punish for contempts by fine or imprisonment, or both; such fine not to exceed, in any one case, $100 and such imprisonment, 1 day.

History: **En. Sec. 630, p. 168, Bannack Stat.; re-en. Sec. 736, p. 184, Cod. Stat. 1871; re-en. Sec. 796, 1st Div. Rev. Stat. 1879; re-en. Sec. 816, 1st Div. Comp. Stat. 1887; amd. Sec. 1653, C. Civ. Proc. 1895; re-en. Sec. 7068, Rev. C. 1907; re-en. Sec. 9701, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 909; re-en. Sec. 9701, R.C.M. 1935; R.C.M. 1947, 93-7504.**

3-10-405. Conviction in docket. The conviction, specifying particularly the offense and the judgment thereon, must be entered by the justice in his docket.

History: **En. Sec. 631, p. 168, Bannack Stat.; re-en. Sec. 737, p. 184, Cod. Stat. 1871; re-en. Sec. 797, 1st Div. Rev. Stat. 1879; re-en. Sec. 817, 1st Div. Comp. Stat. 1887; amd. Sec. 1654, C. Civ. Proc. 1895; re-en. Sec. 7069, Rev. C. 1907; re-en. Sec. 9702, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 910; re-en. Sec. 9702, R.C.M. 1935; R.C.M. 1947, 93-7505.**

Part 5

Records in Justices' Courts

3-10-501. Contents of docket. Every justice must keep a book, denominated a "docket", in which he must enter:

(1) the title of every action or proceeding;

(2) the object of the action or proceeding and, if a sum of money be claimed, the amount thereof;

(3) the date of the summons and the time of its return and, if an order to arrest the defendant be made or a writ of attachment be issued, a statement of the fact;

(4) the time when the parties or either of them appear or their nonappearance if default be made; a minute of the pleading and motions, if in writing, referring to them, if not in writing, a concise statement of the material parts of the pleadings;

(5) every adjournment, stating on whose application and to what time;

(6) the demand for a trial by jury, when the same is made, and by whom made; the order for the jury; and the time appointed for the return of the jury and for the trial;

(7) the names of the jurors who appear and are sworn and the names of all witnesses sworn and at whose request;

(8) the verdict of the jury and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge;

(9) the judgment of the court, specifying the costs included and the time when rendered, and an itemized statement of the costs;

(10) the issuing of the execution, when issued, and to whom; the renewals thereof, if any, and when made; and a statement of any money paid to the justice, when, and by whom;

(11) the receipt of a notice of appeal, if any be given, and of the undertaking on appeal, if any be filed.

History: Secs. 9703-9709, R.C.M. 1921, were en. Secs. 619-624, pp. 166, 167, Bannack Stat.; re-en. Secs. 725-730, pp. 183, 184, Cod. Stat. 1871; re-en. Secs. 785-790, 1st Div. Rev. Stat. 1879; re-en. Secs. 805-810, 1st Div. Comp. Stat. 1887; amd. Secs. 1660-1667, C. Civ. Proc. 1895.

This section re-en. Sec. 7070, Rev. C. 1907; re-en. Sec. 9703, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 911; re-en. Sec. 9703, R.C.M. 1935; R.C.M. 1947, 93-7601.

3-10-502. How entries made — prima facie evidence. (1) The items listed in 3-10-501 must be entered in the docket under the title of the action to which they relate and, unless otherwise provided, at the time when they occur.

(2) Such entries in a justice's docket or a transcript thereof certified by the justice or his successor in office are prima facie evidence of the facts so stated.

History: En. Sec. 1661, C. Civ. Proc. 1895; re-en. Sec. 7071, Rev. C. 1907; re-en. Sec. 9704, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 912; re-en. Sec. 9704, R.C.M. 1935; amd. Sec. 48, Ch. 344, L. 1977; R.C.M. 1947, 93-7602; amd. Sec. 26, Ch. 21, L. 1979.

3-10-503. Index to the docket. A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs and defendants must be entered in the index in the alphabetical order of the first letter of the family name.

History: En. Sec. 1662, C. Civ. Proc. 1895; re-en. Sec. 7072, Rev. C. 1907; re-en. Sec. 9705, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 913; re-en. Sec. 9705, R.C.M. 1935; R.C.M. 1947, 93-7603.

3-10-504 through 3-10-510 reserved.

3-10-511. Records delivered to successor. Every justice of the peace, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, his own as well as those of his predecessors or any other which may be in his custody, to be kept as public records.

History: En. Sec. 1663, C. Civ. Proc. 1895; re-en. Sec. 7073, Rev. C. 1907; re-en. Sec. 9706, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 914; re-en. Sec. 9706, R.C.M. 1935; R.C.M. 1947, 93-7604.

3-10-512. Proceedings when office becomes vacant. If the office of a justice becomes vacant because of his death or his removal from the county or for any other cause before his successor is appointed, the docket and papers that were in his possession shall be deposited in the office of some other justice in the county, who shall deliver them to the successor of the former justice. If there is no other justice in the county, the docket and papers shall be deposited in the office of the county clerk, who shall deliver them to the successor in office of the former justice.

History: En. Sec. 1664, C. Civ. Proc. 1895; re-en. Sec. 7074, Rev. C. 1907; re-en. Sec. 9707, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 915; re-en. Sec. 9707, R.C.M. 1935; amd. Sec. 22, Ch. 491, L. 1973; amd. Sec. 49, Ch. 344, L. 1977; R.C.M. 1947, 93-7605.

3-10-513. Who is the successor. The justice appointed to fill a vacancy is the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the person elected to take the numbered office, as provided in 3-10-201, from that time is the successor.

History: En. Sec. 1666, C. Civ. Proc. 1895; re-en. Sec. 7076, Rev. C. 1907; re-en. Sec. 9709, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 917; re-en. Sec. 9709, R.C.M. 1935; amd. Sec. 23, Ch. 491, L. 1973; amd. Sec. 50, Ch. 344, L. 1977; R.C.M. 1947, 93-7607.

3-10-514. Docket of predecessor. Any justice with whom the docket of his predecessor or of any other justice is deposited has and may exercise over all actions and proceedings entered in such docket the same jurisdiction as if originally commenced before him. In the case of the creation of a new county or the change of the boundary between two counties, any justice into whose hands the docket of a justice formerly acting as such within the same territory may come is, for the purpose of this section, considered the successor of such former justice.

History: En. Sec. 1665, C. Civ. Proc. 1895; re-en. Sec. 7075, Rev. C. 1907; re-en. Sec. 9708, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 916; re-en. Sec. 9708, R.C.M. 1935; R.C.M. 1947, 93-7606.

Part 6

Fees and Costs in Justices' Courts

3-10-601. Collection and disposition of fees — itemized statement. (1) Each justice of the peace shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county wherein he holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) He shall also file an itemized statement showing all fees received during the preceding month in his court. The statement shall state that all fees required by law to be paid during the preceding month in connection

with matters pending before the court have been paid into the county treasury and listed in the itemized statement and that he has not received or been promised, nor has any one else received or been promised for him, any other moneys, emolument, or thing by virtue of or in connection with his office. The statement shall be subscribed and sworn to by the justice.

History: **En. Sec. 2, Ch. 84, L. 1917; re-en. Sec. 4930, R.C.M. 1921; re-en. Sec. 4930, R.C.M. 1935; amd. Sec. 9, Ch. 491, L. 1973; amd. Sec. 4, Ch. 420, L. 1975; amd. Sec. 15, Ch. 344, L. 1977; R.C.M. 1947, 25-307.**

3-10-602. Penalty. Any justice of the peace violating 3-10-601 shall be deemed guilty of a misdemeanor, punishable by a fine not exceeding $1,000 or imprisonment not exceeding 6 months in the county jail, or both. He shall also be deemed guilty of malfeasance in office and, in the discretion of the court, may be removed from office, in which latter case he shall thereafter be disqualified from holding such office.

History: **En. Sec. 3, Ch. 84, L. 1917; re-en. Sec. 4931, R.C.M. 1921; re-en. Sec. 4931, R.C.M. 1935; R.C.M. 1947, 25-308.**

3-10-603. Costs in criminal actions. (1) The following court costs shall be withheld by justices of the peace from accumulated fines and forfeitures in applicable criminal actions:

(a) for each action filed, $7.50;
(b) for each preliminary hearing held, an additional $7.50;
(c) where there is a trial, an additional $7.50.

(2) The costs listed in subsection (1) shall be withheld regardless of the court's finding or the sentence imposed.

(3) Justices of the peace shall remit to the county treasurer the fees as set forth in subsection (1).

History: **(1), (2)En. 25-310 by Sec. 1, Ch. 289, L. 1973; amd. Sec. 5, Ch. 420, L. 1975; amd. Sec. 1, Ch. 207, L. 1977; Sec. 25-310, R.C.M. 1947; (3)En. 25-311 by Sec. 1, Ch. 287, L. 1973; amd. Sec. 1, Ch. 114, L. 1975; amd. Sec. 6, Ch. 420, L. 1975; Sec. 25-311, R.C.M. 1947; R.C.M. 1947, 25-310, 25-311.**

Part 7

Constables

3-10-701. Constables to attend court. Constables must attend the courts of justices of the peace within their counties whenever so required and execute, serve, and return all process and notices directed or delivered to them by a justice of the peace or by any competent authority of such county.

History: **En. Sec. 4550, Pol. C. 1895; re-en. Sec. 3096, Rev. C. 1907; re-en. Sec. 4859, R.C.M. 1921; Cal. Pol. C. Sec. 4314; re-en. Sec. 4859, R.C.M. 1935; amd. Sec. 4, Ch. 253, L. 1975; R.C.M. 1947, 16-3601.**

3-10-702. Governed by law prescribing sheriffs' duties. All the provisions of 3-5-407, 7-32-2101, 7-32-2102, 7-32-2121, except subsections (4), (5), and (6), 7-32-2122, 7-32-2124, 7-32-2127, 7-32-2129 through 7-32-2132, 25-3-101, 25-3-202, 25-3-204 through 25-3-206, 25-3-301, 25-3-302, 25-13-403, 25-31-408(3), 27-18-305, and 27-18-1505 apply to constables and govern their powers, duties, and liabilities.

History: **En. Sec. 4551, Pol. C. 1895; re-en. Sec. 3098, Rev. C. 1907; re-en. Sec. 4861, R.C.M. 1921; Cal. Pol. C. Sec. 4315; re-en. Sec. 4861, R.C.M. 1935; amd. Sec. 11, Ch. 344, L. 1977; R.C.M. 1947, 16-3603.**

3-10-703. Compensation. The board of county commissioners shall, by resolution, on or before July 1 of each year, fix the salary of constables for the following fiscal year. Constables shall receive mileage, at the rate provided by law, when performing their official duties.

History: En. 25-312 by Sec. 9, Ch. 253, L. 1975; R.C.M. 1947, 25-312.

3-10-704. Deputy constables. If in any county there is no appointed constable, the board of county commissioners may, at the request of a party, after being satisfied that it is expedient to do so, specially deputize any proper person of suitable age not interested in the action to serve a summons, with or without an order to arrest the defendant and with or without a writ of attachment, or to serve an execution. The county commissioners are liable upon their official bonds for all official acts of the person so deputized. The appointment of the deputy shall be made in writing on the process, and a note thereof shall be made on the justice's docket.

History: En. Sec. 627, p. 168, Bannack Stat.; re-en. Sec. 733, p. 184, Cod. Stat. 1871; re-en. Sec. 793, p. 187, 1st Div. Rev. Stat. 1879; re-en. Sec. 813, 1st Div. Comp. Stat. 1887; amd. Sec. 1688, C. Civ. Proc. 1895; amd. Sec. 1, p. 138, L. 1899; re-en. Sec. 7086, Rev. C. 1907; re-en. Sec. 9719, R.C.M. 1921; re-en. Sec. 9719, R.C.M. 1935; amd. Sec. 25, Ch. 491, L. 1973; amd. Sec. 8, Ch. 253, L. 1975; amd. Sec. 53, Ch. 344, L. 1977; R.C.M. 1947, 93-7709.

3-10-705. Authority of deputy. The person so deputed shall have the authority of a constable in relation to the service, execution, and return of such process and shall be subject to the same obligations.

History: En. Sec. 628, p. 168, Bannack Stat.; re-en. Sec. 734, p. 184, Cod. Stat. 1871; re-en. Sec. 794, 1st Div. Rev. Stat. 1879; re-en. Sec. 814, 1st Div. Comp. Stat. 1887; re-en. Sec. 1689, C. Civ. Proc. 1895; re-en. Sec. 7087, Rev. C. 1907; re-en. Sec. 9720, R.C.M. 1921; re-en. Sec. 9720, R.C.M. 1935; R.C.M. 1947, 93-7710.

3-10-706. Execution of process by retiring constable. A constable, notwithstanding the expiration of his term of office, may proceed and complete the execution of all final process which he has begun to execute, in the same manner as if he were still in office, and his sureties shall be liable to the same extent.

History: En. Sec. 629, p. 168, Bannack Stat.; re-en. Sec. 735, p. 184, Cod. Stat. 1871; re-en. Sec. 795, 1st Div. Rev. Stat. 1879; re-en. Sec. 815, 1st Div. Comp. Stat. 1887; re-en. Sec. 1690, C. Civ. Proc. 1895; re-en. Sec. 7088, Rev. C. 1907; re-en. Sec. 9721, R.C.M. 1921; re-en. Sec. 9721, R.C.M. 1935; R.C.M. 1947, 93-7711.

Parts 8 and 9 reserved

Part 10

Small Claims Division

3-10-1001. Purpose. It is the purpose of this part and Title 25, chapter 35, to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial.

History: En. 93-345 by Sec. 1, Ch. 572, L. 1977; R.C.M. 1947, 93-345; amd. Sec. 26, Ch. 586, L. 1981.

Compiler's Comments

1981 Amendment: Deleted and reenacted reference to Title 25, chapter 35, to reflect enactment of new small claims act.

Effective Date: Section 30, Ch. 586, L. 1981, provided: "This act is effective on passage and approval." Approved May 1, 1981.

3-10-1002. Creation. There is established within the jurisdiction of each justice's court in this state a small claims division to be known as the "small claims court".

History: **En. 93-346 by Sec. 2, Ch. 572, L. 1977; R.C.M. 1947, 93-346.**

3-10-1003. Location — hours. The small claims division of justice's court shall be located at the same place as the justice's court and shall be open during the same hours as the justice's court.

History: **En. 93-360 by Sec. 16, Ch. 572, L. 1977; R.C.M. 1947, 93-360.**

3-10-1004. Jurisdiction — removal from district court. (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed $1,500, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $1,500. The small claims court shall hear any action so removed from the district court.

History: **En. 93-347 by Sec. 3, Ch. 572, L. 1977; R.C.M. 1947, 93-347; amd. Sec. 27, Ch. 586, L. 1981.**

Compiler's Comments

1981 Amendment: Increased amount in (1) from $750 and in (2) from $500 to $1,500.

Effective Date: Section 30, Ch. 586, L. 1981, provided: "This act is effective on passage and approval." Approved May 1, 1981.

3-10-1005. Docket entries. The justice shall enter in the docket kept by him for small claims cases the following:

(1) the title of each action;

(2) the amount claimed;

(3) the date the order of court/notice to defendant was signed and the date of the trial as stated in the order;

(4) the date the parties appeared or the date on which default was entered;

(5) each adjournment, stating on whose application and to what time;

(6) the judgment of the court;

(7) a statement of any money paid to the justice, when, and by whom;

(8) the date of the issuance of any abstract of the judgment; and

(9) the date of the receipt of the notice of appeal, if any is given, and of the appeal bond, if any is filed.

History: **En. 93-361 by Sec. 17, Ch. 572, L. 1977; R.C.M. 1947, 93-361(2).**

CHAPTER 11

CITY COURTS

Part 1 — Creation and Jurisdiction

Section

3-11-101. City court established.
3-11-102. Concurrent jurisdiction.
3-11-103. Exclusive jurisdiction.
3-11-104. Exceptions to civil jurisdiction.

Part 2 — City Judges

3-11-201. Term of office.
3-11-202. Salary.
3-11-203. When substitute for judge called in.
3-11-204. Training sessions for judges.
3-11-205. Justice of the peace as city judge.
3-11-206. City to provide facilities.

Part 3 — Procedure in City Courts

3-11-301. City attorney to prosecute.
3-11-302. Who named as plaintiff.
3-11-303. Contempts a city judge may punish for.

Part 1

Creation and Jurisdiction

3-11-101. City court established. (1) A city court is established in each city or town. On judicial days, the court shall be open for all business, civil and criminal. On nonjudicial days, as defined in 3-1-302, the court may transact criminal business only.

(2) Police court is hereby renamed city court, and all references to police court or police judges in the Montana Code Annotated shall be considered amended to read city court or city judge.

History: (1)En. Sec. 4910, Pol. C. 1895; re-en. Sec. 3296, Rev. C. 1907; re-en. Sec. 5087, R.C.M. 1921; re-en. Sec. 5087, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1975; amd. Sec. 2, Ch. 344, L. 1977; Sec. 11-1601, R.C.M. 1947; (2)En. Sec. 80, C. Civ. Proc. 1895; re-en. Sec. 6289, Rev. C. 1907; re-en. Sec. 8843, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 121; re-en. Sec. 8843, R.C.M. 1935; amd. Sec. 3, Ch. 165, L. 1975; Sec. 93-411, R.C.M. 1947; R.C.M. 1947, 11-1601, 93-411(1).

3-11-102. Concurrent jurisdiction. (1) The city court has concurrent jurisdiction with the justice's court of all misdemeanors punishable by a fine not exceeding $500 or by imprisonment not exceeding 6 months or by both fine and imprisonment.

(2) Applications for search warrants and complaints charging the commission of a felony may be filed in the city court. When they are filed, the city judge has the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court.

History: En. Sec. 4911, Pol. C. 1895; amd. Sec. 1, Ch. 16, L. 1903; re-en. Sec. 3297, Rev. C. 1907; re-en. Sec. 5088, R.C.M. 1921; Cal. Pol. C. Sec. 4426; re-en. Sec. 5088, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1967; amd. Sec. 10, Ch. 240, L. 1971; amd. Sec. 11, Ch. 94, L. 1973; amd. Sec. 4, Ch. 274, L. 1974; amd. Sec. 2, Ch. 165, L. 1975; amd. Sec. 4, Ch. 344, L. 1977; R.C.M. 1947, 11-1602.

3-11-103. Exclusive jurisdiction. Except as provided in 3-11-104, the city court has exclusive jurisdiction of:

(1) proceedings for the violation of an ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed $300, actions for the collection of taxes or assessments levied for any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessments may be foreclosed in any such action:

(a) city or town purposes;

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving of a public street, sidewalk, alley, or bridge;

(d) the acquisition or improvement of any public grounds; and

(e) public improvements made or ordered by the city or town within its limits;

(3) actions for the collection of money due to the city or town or from the city or town to any person when the amount sought, exclusive of interest and costs, does not exceed $300;

(4) when the amount claimed, exclusive of costs, does not exceed $300, actions for:

(a) the breach of an official bond given by a city or town officer;

(b) the breach of any contract when the city or town is a party or is in any way interested;

(c) damages when the city or town is a party or is in any way interested;

(d) the enforcement of forfeited recognizances given to, for the benefit of, or on behalf of the city or town; and

(e) collection on bonds given upon an appeal taken from the judgment of the court in any action mentioned in subsections (4)(a) through (4)(d);

(5) actions for the recovery of personal property belonging to the city or town when the value of the property, exclusive of the damages for the taking or detention, does not exceed $300; and

(6) actions for the collection of a license fee required by an ordinance of the city or town.

History: En. Sec. 4912, Pol. C. 1895; re-en. Sec. 3298, Rev. C. 1907; re-en. Sec. 5089, R.C.M. 1921; Cal. Pol. C. Sec. 4427; re-en. Sec. 5089, R.C.M. 1935; amd. Sec. 5, Ch. 344, L. 1977; R.C.M. 1947, 11-1603; amd. Sec. 27, Ch. 21, L. 1979; amd. Sec. 6, Ch. 409, L. 1979.

3-11-104. Exceptions to civil jurisdiction. City courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money.

History: En. Sec. 7, Ch. 409, L. 1979.

Compiler's Comments

Codification. Sec. 10, Ch. 409, L. 1979, provided: "Section 7 is intended to be codified as an integral part of Title 3, chapter 11, part 1."

Part 2

City Judges

3-11-201. Term of office. (1) An elected city judge shall hold office for a term of 4 years and until the qualification of his successor.

(2) A justice of the peace designated to act as city judge for a town under 3-11-205 shall serve as city judge for the duration of his term as justice of the peace unless the council terminates the designation.

History: En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part); amd. Sec. 377, Ch. 571, L. 1979; amd. Sec. 3, Ch. 269, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "An elected" for "In cities of the first, second, and third class, the" at the beginning of (1); added subsection (2).

Transition: Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

3-11-202. Salary. The annual salary and compensation of city judges must be fixed by ordinance. Each city judge shall receive his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties.

History: En. Sec. 4765, Pol. C. 1895; re-en. Sec. 3241, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1919; re-en. Sec. 5020, R.C.M. 1921; re-en. Sec. 5020, R.C.M. 1935; amd. Sec. 2, Ch. 76, L. 1953; amd. Sec. 2, Ch. 179, L. 1961; amd. Sec. 2, Ch. 158, L. 1965; amd. Sec. 1, Ch. 186, L. 1967; R.C.M. 1947, 11-726; amd. Sec. 12, Ch. 528, L. 1979.

Compiler's Comments

Transition. Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability. Sec. 17, Ch. 528, L. 1979, was a severability section.

3-11-203. When substitute for judge called in. (1) The city judge or mayor may call in a justice of the peace or some qualified resident of the city or town to act in the judge's place whenever the judge is:

(a) a party in a case;

(b) interested in a case;

(c) the spouse of or related to either party in a case by consanguinity or affinity within the sixth degree; or

(d) sick, absent, or unable to act.

(2) The city judge may call in a justice of the peace or some qualified resident of the city or town to act in his stead when a disqualifying affidavit is filed against him pursuant to the supreme court's rules on disqualification and substitution of judges.

History: En. Sec. 4913, Pol. C. 1895; re-en. Sec. 3299, Rev. C. 1907; re-en. Sec. 5090, R.C.M. 1921; Cal. Pol. C. Sec. 4428; re-en. Sec. 5090, R.C.M. 1935; amd. Sec. 2, Ch. 420, L. 1975; amd. Sec. 7, Ch. 344, L. 1977; R.C.M. 1947, 11-1604; amd. Sec. 28, Ch. 21, L. 1979.

3-11-204. Training sessions for judges. (1) There shall be two mandatory annual training sessions supervised by the supreme court for all elected and appointed city judges. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials shall be paid to the elected or appointed judge for attending the sessions. Whenever the office of city judge is held by a justice of the peace, the costs imposed by this subsection are the joint responsibility of the county and the municipality, with the costs to be allocated and charged in proportion to the work done for each governmental entity. In all other cases, the costs shall be paid by the city or town in which he holds or will hold court and shall be charged against that city or town.

(2) Each city judge shall attend the training sessions. Failure to attend disqualifies him from office and creates a vacancy in the office. However, the supreme court may excuse a city judge from attendance because of illness, a death in the family, or any other good cause.

History: **En. Sec. 80, C. Civ. Proc. 1895; re-en. Sec. 6289, Rev. C. 1907; re-en. Sec. 8843, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 121; re-en. Sec. 8843, R.C.M. 1935; amd. Sec. 3, Ch. 165, L. 1975; R.C.M. 1947, 93-411(2); amd. Sec. 2, Ch. 466, L. 1979; amd. Sec. 13, Ch. 528, L. 1979.**

3-11-205. Justice of the peace as city judge. (1) In a town, the council may designate a justice of the peace of the county in which the town is situated to act as city judge and may by ordinance fix the compensation for his services. The justice of the peace so designated who agrees to act in that capacity shall act as city judge in all cases arising out of violations of ordinances in which the town is a party. If the justice of the peace must travel from his place of residence to hold court, he shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, by the town in which the court is held.

(2) The offices of city judge and justice of the peace may be combined if a justice of the peace is authorized in a city pursuant to 3-10-101.

History: **(1)En. Sec. 4766, Pol. C. 1895; re-en. Sec. 3242, Rev. C. 1907; re-en. Sec. 5021, R.C.M. 1921; re-en. Sec. 5021, R.C.M. 1935; amd. Sec. 5, Ch. 491, L. 1973; amd. Sec. 1, Ch. 420, L. 1975; R.C.M. 1947, 11-727; amd. Sec. 29, Ch. 21, L. 1979; amd. Sec. 14, Ch. 528, L. 1979; (2)En. Sec. 2, Ch. 56, L. 1981; amd. Sec. 4, Ch. 269, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 56 enacted subsection (2).

Chapter 269 substituted "who agrees to act in that capacity shall act as city judge" for "may act as city judge" near the middle of (1).

3-11-206. City to provide facilities. The governing body of the city in which the judge has been elected or appointed shall provide for the judge:

(1) the office space, courtroom, and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(2) the books, records, forms, papers, stationery, postage, office equipment, and supplies necessary for the proper keeping of the records and files of the judicial office and the transaction of business;

(3) one copy of the latest edition of the Montana Code Annotated and all official supplements thereto or immediate access to the code and supplements.

History: **En. Sec. 4, Ch. 466, L. 1979.**

Compiler's Comments

Codification. Sec. 11, Ch. 466, L. 1979, provided: "Sections 3 and 4 are intended to be codified as an integral part of Title 3, chapter 11, and the provisions contained in Title 3, chapter 11, apply to sections 3 and 4."

Part 3

Procedure in City Courts

3-11-301. City attorney to prosecute. The city attorney must prosecute all cases for the violation of any ordinance and prosecute, conduct, and control all proceedings in cases mentioned in 3-11-103, both in the city court and on appeal therefrom to the district court.

History: **En. Sec. 4917, Pol. C. 1895; re-en. Sec. 3303, Rev. C. 1907; re-en. Sec. 5094, R.C.M. 1921; re-en. Sec. 5094, R.C.M. 1935; R.C.M. 1947, 11-1608.**

3-11-302. Who named as plaintiff. (1) An action brought for violation of a city or town ordinance shall be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) An action brought for violation of a state law within the city or town shall be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.

History: **En. 11-1603.1 by Sec. 6, Ch. 344, L. 1977; R.C.M. 1947, 11-1603.1.**

3-11-303. Contempts a city judge may punish for. A city judge may punish for contempt persons guilty of the following acts and no other:

(1) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(2) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the judge or in the immediate vicinity of the court held by him tending to interrupt the due course of a trial or other judicial proceeding;

(3) disobedience or resistance to the execution of a lawful order or process made or issued by the judge;

(4) disobedience to a subpoena duly served or refusal to be sworn or to answer as a witness;

(5) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

History: **En. Sec. 3, Ch. 466, L. 1979.**

Compiler's Comments

Codification. Sec. 11, Ch. 466, L. 1979, provided: "Sections 3 and 4 are intended to be codified as an integral part of Title 3, chapter 11, and the provisions contained in Title 3, chapter 11, apply to sections 3 and 4."

CHAPTER 12

SMALL CLAIMS COURTS

Part 1 — General Provisions

Section
3-12-101. Purpose — liberal construction.
3-12-102. Small claims court authorized.
3-12-103. Creation of court.
3-12-104. Duration of court.
3-12-105. Location — hours.
3-12-106. Jurisdiction — removal from district court.

Part 2 — Small Claims Court Judge

3-12-201. Appointment — salary and expenses — qualifications.
3-12-202. Assistance to claimants.
3-12-203. Judge in multicounty district.

Part 1

General Provisions

3-12-101. Purpose — liberal construction. It is the purpose of this chapter and chapter 34 of Title 25 to provide a speedy remedy in claims falling hereunder and to promote a forum in which such claims may be heard and disposed of without the necessity of formal trial. For this reason, the provisions hereof should be liberally construed to provide an informal but equitable means of justice, and the judges appointed hereunder are required to assist all parties before them to obtain substantial justice.

History: En. 93-328 by Sec. 7, Ch. 519, L. 1975; R.C.M. 1947, 93-328.

3-12-102. Small claims court authorized. There may be created within the jurisdiction of the district court of any county of the state of Montana a separate court, known as the "small claims court".

History: En. 93-322 by Sec. 1, Ch. 519, L. 1975; R.C.M. 1947, 93-322.

3-12-103. Creation of court. (1) A small claims court may be created by a resolution passed by the board of county commissioners after consultation with the district court judges of the judicial district in which the county is located or by county initiative as provided in Title 7, chapter 5, part 1.

(2) Upon passage of the resolution or initiative, the judge of the appropriate judicial district shall, by court order, establish a small claims court under the provisions of this chapter.

(3) When the order is filed with the clerk of the district court of the appropriate county, the clerk of the district court becomes the clerk of the small claims court.

History: En. 93-323 by Sec. 2, Ch. 519, L. 1975; R.C.M. 1947, 93-323; amd. Sec. 30, Ch. 21, L. 1979; amd. Sec, 378, Ch. 571, L. 1979.

3-12-104. Duration of court. A small claims court created under this chapter continues in existence until abolished by the same means by which it was formed under 3-12-103. Any small claims court may be abolished by county initiative as provided in 3-12-103.

History: En. 93-324 by Sec. 3, Ch. 519, L. 1975; R.C.M. 1947, 93-324.

3-12-105. Location — hours. (1) The small claims court shall be located in the appropriate district and shall be open as required by the district judge.

(2) In the event that more than one small claims court judge has been appointed, the judges so appointed may divide their responsibility hereunder.

History: En. 93-326 by Sec. 5, Ch. 519, L. 1975; R.C.M. 1947, 93-326(part).

3-12-106. Jurisdiction — removal from district court. (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when:

(a) such action arises out of a contract, express or implied;

(b) the amount of the claim, exclusive of costs, does not exceed $1,500; and

(c) the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed $1,500.

(3) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $1,500. The small claims court shall hear any action so removed from the district court.

History: **En. 93-329 by Sec. 8, Ch. 519, L. 1975; R.C.M. 1947, 93-329.**

Part 2

Small Claims Court Judge

3-12-201. Appointment — salary and expenses — qualifications. (1) The judges of the judicial district in which a small claims court has been created shall appoint a judge of the small claims court who shall:

(a) take the oath required of judges;

(b) serve at the pleasure of the district court judges;

(c) be paid a salary set by the district court judges and actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503; and

(d) be an attorney licensed to practice law in Montana.

(2) The judges of the district court may appoint more than one small claims court judge for any small claims court. The salary shall be prorated among the judges appointed.

History: **En. 93-325 by Sec. 4, Ch. 519, L. 1975; amd. Sec. 25, Ch. 344, L. 1977; R.C.M. 1947, 93-325; amd. Sec. 15, Ch. 528, L. 1979.**

Compiler's Comments

Transition. Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

Severability. Sec. 17, Ch. 528, L. 1979, was a severability section.

3-12-202. Assistance to claimants. The small claims court judge shall assist any claimant in preparing an affidavit or may direct the clerk of court to provide such assistance.

History: **En. 93-326 by Sec. 5, Ch. 519, L. 1975; R.C.M. 1947, 93-326(part).**

3-12-203. Judge in multicounty district. (1) Where there is more than one county in the judicial district and the county commissioners of more than one county in that district create small claims courts, the district judges may provide that the same judge of small claims court may preside over more than one of the small claims courts in the judicial district.

(2) In such cases the salary of the small claims court judge shall be prorated among the counties in which he presides.

(3) The judge shall be entitled to collect mileage for the distance actually traveled when required to convene small claims court in more than one county, pursuant to 2-18-503.

History: **En. 93-327 by Sec. 6, Ch. 519, L. 1975; R.C.M. 1947, 93-327.**

CHAPTERS 13 AND 14

RESERVED

CHAPTER 15

JURIES AND JURORS

Part 1 — Juries—Definitions and Composition

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3-15-101. Jury defined.
3-15-102. Kinds of juries.
3-15-103. Grand jury defined.
3-15-104. Trial jury defined.
3-15-105. Jury of inquest defined.
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Part 2 — Jurors' Fees

3-15-201. Fees in courts of record.
3-15-202. Repealed. Sec. 7, Ch. 200, L. 1981.
3-15-203. Fees in courts not of record and coroner's inquests.
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Part 8 — Juries of Inquest

3-15-801. Summoning the juries.
3-15-802. Manner of impaneling.

Part 1

Juries — Definitions and Composition

3-15-101. Jury defined. A jury is a body of persons temporarily selected from the citizens of a particular district and invested with power to present or indict a person for a public offense or to try a question of fact.

History: En. Sec. 220, C. Civ. Proc. 1895; re-en. Sec. 6330, Rev. C. 1907; re-en. Sec. 8883, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 190; re-en. Sec. 8883, R.C.M. 1935; amd. Sec. 1, Ch. 203, L. 1939; R.C.M. 1947, 93-1201.

3-15-102. Kinds of juries. Juries are of three kinds:

(1) grand juries;
(2) trial juries;
(3) juries of inquest.

History: En. Sec. 221, C. Civ. Proc. 1895; re-en. Sec. 6331, Rev. C. 1907; re-en. Sec. 8884, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 191; re-en. Sec. 8884, R.C.M. 1935; R.C.M. 1947, 93-1202.

3-15-103. Grand jury defined. A grand jury is a body of persons, 11 in number, returned as provided by law from the citizens of a county before a court of competent jurisdiction and sworn to inquire into public offenses committed or triable within the county.

History: En. Sec. 222, C. Civ. Proc. 1895; re-en. Sec. 6332, Rev. C. 1907; re-en. Sec. 8885, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 192; re-en. Sec. 8885, R.C.M. 1935; amd. Sec. 2, Ch. 203, L. 1939; amd. Sec. 34, Ch. 344, L. 1977; R.C.M. 1947, 93-1203.

3-15-104. Trial jury defined. A trial jury is a body of persons returned from the citizens of a particular district before a court or officer of competent jurisdiction and sworn to try and determine, by verdict, a question of fact.

History: En. Sec. 223, C. Civ. Proc. 1895; re-en. Sec. 6333, Rev. C. 1907; re-en. Sec. 8886, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 193; re-en. Sec. 8886, R.C.M. 1935; amd. Sec. 3, Ch. 203, L. 1939; R.C.M. 1947, 93-1204.

3-15-105. Jury of inquest defined. A jury of inquest is a body of persons summoned from the citizens of a particular district before the sheriff, coroner, or other ministerial officer to inquire concerning particular facts.

History: En. Sec. 226, C. Civ. Proc. 1895; re-en. Sec. 6336, Rev. C. 1907; re-en. Sec. 8889, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 195; re-en. Sec. 8889, R.C.M. 1935; amd. Sec. 5, Ch. 203, L. 1939; R.C.M. 1947, 93-1207.

3-15-106. Number of a trial jury. (1) A trial jury consists of 12 persons; provided that, in civil actions and cases of misdemeanor, it may consist of 12 or any number less than 12 upon which the parties may agree in open court.

(2) In all civil actions where the relief asked for in the complaint is under the sum of $10,000, a trial jury may, in the discretion of the trial judge, consist of six persons and two-thirds of the jury may render a verdict.

History: En. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 194; re-en. Sec. 8887, R.C.M. 1935; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971; R.C.M. 1947, 93-1205(part).

3-15-107. Number in justices' courts. A jury in a justice's court, both in civil cases and misdemeanors, consists of six persons, but the parties may agree to a less number than six.

History: En. Sec. 225, C. Civ. Proc. 1895; re-en. Sec. 6335, Rev. C. 1907; re-en. Sec. 8888, R.C.M. 1921; re-en. Sec. 8888, R.C.M. 1935; R.C.M. 1947, 93-1206.

Part 2

Jurors' Fees

3-15-201. Fees in courts of record. (1) A grand or trial jury panel member shall receive $12 per day for attendance before any court of record and a mileage allowance, as provided in 2-18-503, for traveling each way between his residence and the county seat. Those jurors selected from the panel for a case shall receive an additional $13 a day while serving.

(2) A juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case shall forfeit per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933, R.C.M. 1921; amd. Sec. 1, Ch. 18, L. 1935; re-en. Sec. 4933, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1945; amd. Sec. 1, Ch. 117, L. 1963; amd. Sec. 1, Ch. 332, L. 1971; amd. Sec. 10, Ch. 439, L. 1975; amd. Sec. 16, Ch. 344, L. 1977; R.C.M. 1947, 25-401; amd. Sec. 1, Ch. 200, L. 1981.

Compiler's Comments

1981 Amendment: Changed "juror" to "jury panel member" at the beginning of (1); added the last sentence of (1) relating to additional compensation of selected jurors; substituted "shall forfeit per diem and mileage" for "in the discretion of the court, may receive per diem and mileage" at the end of the section.

3-15-202. Repealed. Sec. 7, Ch. 200, L. 1981.

History: En. Sec. 2, p. 48, L. 1903; re-en. Sec. 3180, Rev. C. 1907; amd. Sec. 1, Ch. 23, L. 1913; re-en. Sec. 4934, R.C.M. 1921; re-en. Sec. 4934, R.C.M. 1935; R.C.M. 1947, 25-402.

3-15-203. Fees in courts not of record and coroner's inquests. (1) Jurors in courts not of record, in both civil and criminal actions, shall receive a fee of $12 per day. In civil actions, the jurors' fees must be paid by the party demanding the jury and taxed as costs against the losing party.

(2) Jurors in coroner's inquests shall receive a fee of $7.50 per day.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907; re-en. Sec. 4935, R.C.M. 1921; re-en. Sec. 4935, R.C.M. 1935; amd. Sec. 1, Ch. 206, L. 1947; amd. Sec. 1, Ch. 154, L. 1969; amd. Sec. 2, Ch. 332, L. 1971; amd. Sec. 17, Ch. 344, L. 1977; R.C.M. 1947, 25-403; amd. Sec. 1, Ch. 231, L. 1979.

3-15-204. Duties of clerk as to jurors. (1) The clerk must keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk must give to each juror, at the time he is excused from further service, a certificate taken from a book containing a stub with a like designation, signed by himself under seal, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) On presentation of such certificate to the county treasurer, the amount specified in the certificate must be paid out of the general fund.

(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct.

History: En. Sec. 4645, Pol. C. 1895; re-en. Sec. 3179, Rev. C. 1907; re-en. Sec. 4937, R.C.M. 1921; re-en. Sec. 4937, R.C.M. 1935; R.C.M. 1947, 25-405.

3-15-205. Costs of impaneling jury after settlement reached. In any civil action before a court of record in which the parties substantially agree to a settlement of the issues prior to impanelment of the jury and either settle the action or stipulate to a continuance, and fail or refuse to inform the court or clerk of court of such settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and such other costs as may have been incurred by the court, against any party. Costs collected under this section shall be deposited in the county general fund.

History: En. Sec. 1, Ch. 299, L. 1981.

Compiler's Comments

1981 Title: The title to SB 268 (Ch. 299, L. 1981) read: "An act to assess the cost of impaneling a jury against parties who fail to inform the court of a settlement of the issues."

Part 3

Jurors — Competency and Exemptions

3-15-301. Who competent. A person is competent to act as a juror if he is a registered elector whose name appears on the most recent list of all registered electors, as prepared by the county registrar.

History: Earlier statutes were Sec. 8, p. 506, Cod. Stat. 1871; amd. Sec. 1, p. 70, L. 1873; re-en. Sec. 780, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 57, L. 1881; re-en. Sec. 1304, 5th Div. Comp. Stat.

1887; re-en. Sec. 230, C. Civ. Proc. 1895; re-en. Sec. 6337, Rev. C. 1907; re-en. Sec. 8890, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 198; re-en. Sec. 8890, R.C.M. 1935; amd. Sec. 6, Ch. 203, L. 1939; amd. Sec. 1, Ch. 116, L. 1965; amd. Sec. 20, Ch. 240, L. 1971; amd. Sec. 32, Ch. 94, L. 1973; amd. Sec. 2, Ch. 298, L. 1975; R.C.M. 1947, 93-1301.

3-15-302. Inhabitants of local government jurisdiction competent. (1) On the trial of an action in which a city or town is interested, the inhabitants thereof are competent jurors if otherwise competent and qualified according to law.

(2) On the trial on an action in which the county is interested, the inhabitants of such county are competent jurors if otherwise competent and qualified according to law.

History: (1)En. Sec. 5042, Pol. C. 1895; re-en. Sec. 3941, Rev. C. 1907; re-en. Sec. 8891, R.C.M. 1921; re-en. Sec. 8891, R.C.M. 1935; Sec. 93-1302, R.C.M. 1947; (2)En. Sec. 341, 5th Div. Rev. Stat. 1879; re-en. Sec. 750, 5th Div. Comp. Stat. 1887; amd. Sec. 4198, Pol. C. 1895; re-en. Sec. 2878, Rev. C. 1907; re-en. Sec. 4449, R.C.M. 1921; re-en. Sec. 4449, R.C.M. 1935; Sec. 16-810, R.C.M. 1947; R.C.M. 1947, 16-810, 93-1302.

3-15-303. Who not competent. A person is not competent to act as juror:

(1) who does not possess the qualifications prescribed by 3-15-301; or

(2) who has been convicted of malfeasance in office or any felony or other high crime.

History: En. Sec. 231, C. Civ. Proc. 1895; re-en. Sec. 6338, Rev. C. 1907; re-en. Sec. 8892, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 199; re-en. Sec. 8892, R.C.M. 1935; R.C.M. 1947, 93-1303.

3-15-304 through 3-15-310 reserved.

3-15-311. Repealed. Sec. 7, Ch. 51, L. 1981.

History: En. Sec. 9, p. 506, Cod. Stat. 1871; re-en. Sec. 781, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 56, L. 1881; amd. Sec. 1, p. 101, L. 1883; re-en. Sec. 1305, 5th Div. Comp. Stat. 1887; amd. Sec. 232, C. Civ. Proc. 1895; re-en. Sec. 6339, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1917; re-en. Sec. 8893, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 200; re-en. Sec. 8893, R.C.M. 1935; amd. Sec. 7, Ch. 203, L. 1939; amd. Sec. 1, Ch. 425, L. 1971; amd. Sec. 35, Ch. 344, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 93-1304(1) thru (3).

3-15-312. Discharge by court. The court must discharge a person from serving as a trial juror in either of the following cases:

(1) when it satisfactorily appears that the person is not competent; or

(2) when it satisfactorily appears that the person should be excused under 3-15-313 or 3-15-507.

History: En. Sec. 9, p. 506, Cod. Stat. 1871; re-en. Sec. 781, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 56, L. 1881; amd. Sec. 1, p. 101, L. 1883; re-en. Sec. 1305, 5th Div. Comp. Stat. 1887; amd. Sec. 232, C. Civ. Proc. 1895; re-en. Sec. 6339, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1917; re-en. Sec. 8893, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 200; re-en. Sec. 8893, R.C.M. 1935; amd. Sec. 7, Ch. 203, L. 1939; amd. Sec. 1, Ch. 425, L. 1971; amd. Sec. 35, Ch. 344, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 93-1304(4); amd. Sec. 1, Ch. 51, L. 1981.

Compiler's Comments

1981 Amendment: Substituted (2) for "when it satisfactorily appears that the person is exempt and claims the benefit of exemption".

3-15-313. Who may be excused — affidavit to claim excuse. (1) The court shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.

(2) If a person believes jury service would entail undue hardship for him or the public served, he may make and transmit an affidavit to the clerk of the court for which he is summoned stating his occupation or such other facts as he believes will excuse him from jury service. The affidavit shall be filed with the clerk of the court who shall transmit it to the court. The court may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

(3) A person may also be excused from jury service upon presentation of his excuse to the court as provided in 3-15-507.

History: En. Sec. 233, C. Civ. Proc. 1895; re-en. Sec. 6340, Rev. C. 1907; re-en. Sec. 8894, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 201; re-en. Sec. 8894, R.C.M. 1935; amd. Sec. 8, Ch. 203, L. 1939; R.C.M. 1947, 93-1305; amd. Sec. 2, Ch. 51, L. 1981.

Compiler's Comments

1981 Amendment: All new language substituted for "A juror must not be excused by a court for a slight or trivial cause or for hardship or inconvenience to his business but only when material injury or destruction to his property or property entrusted to him is threatened or when his own health or the sickness or death of a member of his family requires his absence."

3-15-314. Repealed. Sec. 7, Ch. 51, and Sec. 7, Ch. 200, L. 1981.

History: En. Sec. 234, C. Civ. Proc. 1895; re-en. Sec. 6341, Rev. C. 1907; re-en. Sec. 8895, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 202; re-en. Sec. 8895, R.C.M. 1935; amd. Sec. 9, Ch. 203, L. 1939; R.C.M. 1947, 93-1306.

3-15-315 through 3-15-320 reserved.

3-15-321. Attachment and fine for failure to attend. Any juror summoned who willfully and without reasonable excuse fails to attend may be attached and compelled to attend. The court may impose a fine not exceeding $50, upon which execution may issue. If the juror was not personally served, the fine must not be imposed until, upon an order to show cause, an opportunity has been offered the juror to be heard. The court may for good cause remit, modify, or cause any fine collected to be refunded.

History: En. Sec. 310, C. Civ. Proc. 1895; re-en. Sec. 6363, Rev. C. 1907; re-en. Sec. 8917, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 238; re-en. Sec. 8917, R.C.M. 1935; R.C.M. 1947, 93-1701.

Part 4

Jury Lists

3-15-401. Jury lists — by whom and when made. The chairman or, in his absence, any member of the board of county commissioners and the county clerk and recorder of each county must meet at the county seat of each county at the office of the county clerk and recorder on the second Monday of June of each year for the purpose of making a list of persons to serve as trial jurors for the ensuing year. If they fail to meet on the day specified in this section, they must meet as soon thereafter as practicable.

History: En. Sec. 240, C. Civ. Proc. 1895; re-en. Sec. 6342, Rev. C. 1907; re-en. Sec. 8896, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 204; re-en. Sec. 8896, R.C.M. 1935; amd. Sec. 1, Ch. 133, L. 1949; amd. Sec. 1, Ch. 86, L. 1959; R.C.M. 1947, 93-1401(part); amd. Sec. 1, Ch. 313, L. 1979; amd. Sec. 2, Ch. 200, L. 1981.

Compiler's Comments

1981 Amendment: Changed "December" to "June" in the middle of the first sentence.

3-15-402. Selection of qualified persons. At the meeting specified in 3-15-401, the officers present must select from the most recent list of all registered electors, as prepared by the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name so appearing on said list shall be assigned a number which shall be placed opposite the name on the jury list and shall be considered the number of the juror opposite whose name it appears. Said numbers shall be consecutive from "1" to the total number of jurors.

History: En. Sec. 241, C. Civ. Proc. 1895; re-en. Sec. 6343, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1919; re-en. Sec. 8897, R.C.M. 1921; re-en. Sec. 8897, R.C.M. 1935; amd. Sec. 1, Ch. 168, L. 1957; amd. Sec. 1, Ch. 298, L. 1975; R.C.M. 1947, 93-1402.

3-15-403. Lists delivered to clerk. A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by him in his office.

History: En. Sec. 242, C. Civ. Proc. 1895; re-en. Sec. 6344, Rev. C. 1907; re-en. Sec. 8898, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 208; re-en. Sec. 8898, R.C.M. 1935; R.C.M. 1947, 93-1403; amd. Sec. 31, Ch. 21, L. 1979; amd. Sec. 3, Ch. 200, L. 1981.

Compiler's Comments

1981 Amendment: Changed "5 days" to "15 days" at the beginning of the last sentence.

3-15-404. Duty of clerk — jury box. The clerk shall prepare and keep a jury box and contents as prescribed in this section. The number of each juror shall be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips shall be placed in a box of ample size to permit them to be thoroughly mixed. The box shall be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used which is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number thereon. The box shall contain only one slip for each number corresponding to the number before the name of each juror on the jury list.

History: En. Sec. 243, C. Civ. Proc. 1895; re-en. Sec. 6345, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1919; re-en. Sec. 8899, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 209; re-en. Sec. 8899, R.C.M. 1935; amd. Sec. 2, Ch. 168, L. 1957; amd. Sec. 1, Ch. 110, L. 1969; amd. Sec. 56, Ch. 344, L. 1977; R.C.M. 1947, 93-1404.

3-15-405 through 3-15-410 reserved.

3-15-411. Term of service of jurors. (1) The persons whose names are so returned are known as regular jurors and must serve for 1 year and until other persons are selected and returned unless they are excused by the court or a judge pursuant to 3-15-501.

(2) If jurors are drawn before the selection and return of the new jury list as provided in this part and thereafter a new jury list is returned, they shall continue to serve as jurors, if the business of the court requires the attendance of a jury, for a period not exceeding 90 days.

(3) Notwithstanding such limitation of service, a jury composed of such jurors duly impaneled to try any cause shall continue to serve in such cause

until discharged by the court from any further consideration of such cause. The fact that a new jury list has been returned shall not affect their status as jurors.

History: **En. Sec. 245, C. Civ. Proc. 1895; re-en. Sec. 6347, Rev. C. 1907; re-en. Sec. 8901, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 210; amd. Sec. 1, Ch. 135, L. 1931; re-en. Sec. 8901, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1947; R.C.M. 1947, 93-1406; amd. Sec. 2, Ch. 313, L. 1979.**

Part 5

Trial Juries — District Court

3-15-501. Order directing that trial jury be drawn and summoned. (1) At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than 6 months and the plaintiff or defendant in such case has requested a jury trial or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and no jury is in attendance, the court must make an order directing a trial jury to be drawn and summoned to attend before said court. Such order must specify the number of jurors to be drawn and the time at which the jurors are required to attend, which time may be at the same term in which the jurors are drawn or at the next succeeding term, in the discretion of the court.

(2) The court may direct that such causes, either criminal or civil, in which a jury may be required or in which a jury may have been demanded be continued and fixed for trial when a jury shall be in attendance.

(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.

(4) The judge or judges of a district or the judge of a department may designate that jury service in his or their district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at such a trial.

(5) If the number of unexcused jurors is not sufficient to meet current requirements at any time, jurors excused under subsection (3) or (4) may be required to serve.

History: **En. Sec. 260, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 7, L. 1907; re-en. Sec. 6348, Rev. C. 1907; re-en. Sec. 8902, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 214; re-en. Sec. 8902, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1949; R.C.M. 1947, 93-1501; amd. Sec. 3, Ch. 313, L. 1979.**

3-15-502. Jury commissioner. The clerk of court is the jury commissioner.

History: **En. Sec. 261, C. Civ. Proc. 1895; re-en. Sec. 6349, Rev. C. 1907; re-en. Sec. 8903, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 215; re-en. Sec. 8903, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1937; amd. Sec. 1, Ch. 3, L. 1939; amd. Sec. 3, Ch. 168, L. 1957; amd. Sec. 57, Ch. 344, L. 1977; R.C.M. 1947, 93-1502; amd. Sec. 4, Ch. 200, L. 1981.**

Compiler's Comments

1981 Amendment: Completely rewrote section that formerly read: "District judge to draw jury. Immediately after the order mentioned in 3-15-501 has been made, the district judge shall in the presence of the clerk of the court proceed to draw the jurors by number from the jury box."

3-15-503. Drawing — how conducted. (1) The clerk shall place the box on a rod so that it may readily revolve. The box must be revolved a sufficient number of times to ensure that the numbered slips in it become thoroughly mixed. Thereafter the jury commissioner shall draw from the box, one at a time, as many of the numbered slips as are ordered by the court.

(2) A record of the drawing shall be entered in the minutes of the court. It must show the names of the jurors corresponding to the numbers drawn from the jury box.

(3) If the jury commissioner is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.

(4) No person may be asked to serve for more than one term during any year unless all the numbers in the jury box have been drawn and there are no other qualified jurors available.

History: En. Sec. 262, C. Civ. Proc. 1895; re-en. Sec. 6350, Rev. C. 1907; amd. Sec. 2, Ch. 35, L. 1919; re-en. Sec. 8904, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 219; amd. Sec. 1, Ch. 148, L. 1933; re-en. Sec. 8904, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1937; amd. Sec. 2, Ch. 3, L. 1939; amd. Sec. 4, Ch. 168, L. 1957; amd. Sec. 2, Ch. 110, L. 1969; amd. Sec. 36, Ch. 344, L. 1977; R.C.M. 1947, 93-1503; amd. Sec. 4, Ch. 313, L. 1979; amd. Sec. 5, Ch. 200, L. 1981.

Compiler's Comments

1981 Amendment: Changed "judge" to "jury commissioner" in the last sentence of (1); changed "court" to "jury commissioner" at the beginning of (3).

3-15-504. Drawing by two or more judges in same district. In districts where there are two or more judges, each judge may order jurors drawn and summoned to attend the session or term over which he presides, as provided in this part.

History: En. Sec. 267, C. Civ. Proc. 1895; re-en. Sec. 6355, Rev. C. 1907; re-en. Sec. 8909, R.C.M. 1921; re-en. Sec. 8909, R.C.M. 1935; R.C.M. 1947, 93-1508.

3-15-505. Notice to jurors. The clerk shall serve notice by mail on the persons drawn as jurors and require response thereto by mail in such form as the supreme court designates. He may attach to the notice a form for an affidavit claiming an excuse as provided for in 3-15-313. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall then serve notice personally on such person and require a response to the notice.

History: En. Sec. 280, C. Civ. Proc. 1895; re-en. Sec. 6356, Rev. C. 1907; amd. Sec. 1, Ch. 9, L. 1911; re-en. Sec. 8910, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 225; re-en. Sec. 8910, R.C.M. 1935; amd. Sec. 1, Ch. 88, L. 1959; R.C.M. 1947, 93-1509; amd. Sec. 5, Ch. 313, L. 1979; amd. Sec. 3, Ch. 51, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "an excuse as provided for in 3-15-313" for "exemption provided for in 3-15-314".

3-15-506. Obtaining additional jurors when necessary. (1) Whenever it appears to a district judge that additional jurors will be needed for any term or trial, the jury commissioner shall draw as many numbers from the jury box as are necessary to secure the required number of additional jurors. Before the jury commissioner draws the numbers, the judge shall by appropriate order designate the number of jurors needed.

(2) When the judge believes that securing the additional jurors from all of the county would cause unnecessary delay or expense, he may order the jurors selected from only a designated portion of the county, which portion shall never be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a number is drawn and the jury list shows the person represented by the number to be a resident of an area outside the area designated by the court order, that number shall be returned to the jury box and a new number drawn.

(3) When the required number of names have been selected, the judge may order the prospective jurors notified by telephone or mail by the jury commissioner.

History: En. Sec. 3, Ch. 110, L. 1969; amd. Sec. 58, Ch. 344, L. 1977; R.C.M. 1947, 93-1512; amd. Sec. 6, Ch. 313, L. 1979; amd. Sec. 6, Ch. 200, L. 1981.

Compiler's Comments

1981 Amendment: Changed "judge" to "jury commissioner" in the middle of the first sentence of (1); substituted "Before the jury commissioner draws the numbers" for "Before drawing the numbers" in the last sentence of (1); changed "clerk of the court" to "jury commissioner" at the end of (3).

3-15-507. Clerk to call list of jurors summoned and prepare capsules. (1) At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and the court may hear the excuses of prospective jurors summoned. The court shall excuse any person satisfying the requirements of 3-15-313(1).

(2) The clerk shall write the names of the jurors present and not excused on separate ballots, fold the ballots so that the names are concealed, and place them in black capsules. In the presence of the court, the clerk shall deposit the capsules containing the ballots in a box large enough to hold all of the capsules without crowding. The box shall be so arranged that the judge drawing the capsules from the box is unable to see the capsules he is about to draw. The box must be kept sealed or locked until ordered by the court to be opened.

History: En. Sec. 330, C. Civ. Proc. 1895; re-en. Sec. 6368, Rev. C. 1907; amd. Sec. 8, Ch. 35, L. 1919; re-en. Sec. 8922, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 246; re-en. Sec. 8922, R.C.M. 1935; amd. Sec. 40, Ch. 344, L. 1977; R.C.M. 1947, 93-1805; amd. Sec. 4, Ch. 51, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "prospective" before "jurors" in (1); added the last sentence of (1).

3-15-508. Repealed. Sec. 7, Ch. 200, L. 1981.

History: En. Sec. 6369A, Rev. C. 1907 by Sec. 9, Ch. 35, L. 1919; re-en. Sec. 8924, R.C.M. 1921; re-en. Sec. 8924, R.C.M. 1935; R.C.M. 1947, 93-1807.

3-15-509. Manner of impaneling. (1) Whenever a civil action is called by the court for trial and a jury is required, the trial jury shall be impaneled as prescribed in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47.

(2) When the action is a criminal one, the jury shall be impaneled as prescribed in Title 46.

History: En. Sec. 331, C. Civ. Proc. 1895; re-en. Sec. 6369, Rev. C. 1907; re-en. Sec. 8923, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 247; re-en. Sec. 8923, R.C.M. 1935; amd. Sec. 41, Ch. 344, L. 1977; R.C.M. 1947, 93-1806.

Part 6

Grand Juries

3-15-601. When and how drawn and summoned. (1) Whenever in the opinion of the district judge a grand jury is necessary, he must make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of jurors to be drawn, which may not be less than 15 or more than 20.

(2) The jurors must be drawn from the jury box mentioned in 3-15-404. The list of names shall be certified and the jurors summoned in the same manner as for trial jurors. The numbers of any persons drawn who are not impaneled on the grand jury must be returned to the jury box.

History: En. Sec. 320, C. Civ. Proc. 1895; re-en. Sec. 6364, Rev. C. 1907; re-en. Sec. 8918, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 241; re-en. Sec. 8918, R.C.M. 1935; amd. Sec. 4, Ch. 3, L. 1973; amd. Sec. 59, Ch. 344, L. 1977; R.C.M. 1947, 93-1801; amd. Sec. 32, Ch. 21, L. 1979.

3-15-602. Who constitutes jury. (1) When 11 of the persons summoned as grand jurors who are competent and not excused are present, they constitute the grand jury.

(2) When more than 11 are present, the clerk shall write their names on separate ballots and place the ballots in black capsules. The capsules shall be deposited in a box large enough to hold all of the capsules without crowding. The box shall be so arranged that the clerk drawing the capsules from the box is unable to see the capsule he is about to draw. The clerk shall draw 11 capsules. The persons whose names are on the ballots so drawn shall constitute the grand jury.

(3) When less than 11 are present, the court shall order a sufficient number to be immediately drawn from the jury box and summoned to attend the court.

History: En. Sec. 321, C. Civ. Proc. 1895; re-en. Sec. 6365, Rev. C. 1907; amd. Sec. 7, Ch. 35, L. 1919; re-en. Sec. 8919, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 242; re-en. Sec. 8919, R.C.M. 1935; amd. Sec. 5, Ch. 3, L. 1973; amd. Sec. 38, Ch. 344, L. 1977; R.C.M. 1947, 93-1802.

3-15-603. Manner of impaneling. After the jurors have been selected, the grand jury shall be impaneled as prescribed in 46-11-301 through 46-11-303.

History: En. Sec. 322, C. Civ. Proc. 1895; re-en. Sec. 6366, Rev. C. 1907; re-en. Sec. 8920, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 243; re-en. Sec. 8920, R.C.M. 1935; amd. Sec. 39, Ch. 344, L. 1977; R.C.M. 1947, 93-1803.

3-15-604. Drawing and summoning in multijudge districts. In districts where there are two or more judges, each judge may order a grand jury to be drawn and summoned to attend the session or term over which he presides, as provided in this part, but no more than one grand jury must ever be in attendance upon any district court at the same time.

History: En. Sec. 323, C. Civ. Proc. 1895; re-en. Sec. 6367, Rev. C. 1907; re-en. Sec. 8921, R.C.M. 1921; re-en. Sec. 8921, R.C.M. 1935; R.C.M. 1947, 93-1804.

Part 7

Juries in Inferior Courts

3-15-701. When and by whom jurors summoned. When jurors are required in any justice's or city court or any other court of limited jurisdiction, they must, upon the order of the justice or of the judge thereof, be summoned by the sheriff, constable, marshal, or policeman of the jurisdiction.

History: En. Sec. 290, C. Civ. Proc. 1895; re-en. Sec. 6359, Rev. C. 1907; re-en. Sec. 8913, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 230; re-en. Sec. 8913, R.C.M. 1935; R.C.M. 1947, 93-1601; amd. Sec. 8, Ch. 466, L. 1979.

3-15-702. How to be summoned. Such jurors must be summoned from the persons competent to serve as jurors, residents of the county, city, or town in which such court has jurisdiction, by notifying them orally that they are summoned and of the time and place at which their attendance is required.

History: En. Sec. 291, C. Civ. Proc. 1895; re-en. Sec. 6360, Rev. C. 1907; re-en. Sec. 8914, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 231; re-en. Sec. 8914, R.C.M. 1935; amd. Sec. 14, Ch. 491, L. 1973; R.C.M. 1947, 93-1602.

3-15-703. Officer's return. The officer summoning the jurors shall, at the time fixed in the order for their appearance, return the order to the court with a list of the persons summoned endorsed thereon.

History: En. Sec. 292, C. Civ. Proc. 1895; re-en. Sec. 6361, Rev. C. 1907; re-en. Sec. 8915, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 232; re-en. Sec. 8915, R.C.M. 1935; amd. Sec. 37, Ch. 344, L. 1977; R.C.M. 1947, 93-1603.

3-15-704. Forming jury. At the time appointed for a jury trial in a justice's or city court or any other court of limited jurisdiction, the list of jurors summoned must be called. The jurors summoned shall be 12 in number or double the number agreed upon by the parties before the trial. The names of those attending and not excused must be written upon separate slips of paper, which slips must be folded so as to conceal the names, and placed in a box from which the trial jury must be drawn.

History: En. Sec. 340, C. Civ. Proc. 1895; re-en. Sec. 6370, Rev. C. 1907; re-en. Sec. 8925, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 250; re-en. Sec. 8925, R.C.M. 1935; R.C.M. 1947, 93-1808; amd. Sec. 33, Ch. 21, L. 1979; amd. Sec. 9, Ch. 466, L. 1979.

3-15-705. Manner of impaneling. The jury shall be impaneled as provided in:

(1) Title 46, if the action is a criminal one;

(2) Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47, if the action is a civil one.

History: En. Sec. 341, C. Civ. Proc. 1895; re-en. Sec. 6371, Rev. C. 1907; re-en. Sec. 8926, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 251; re-en. Sec. 8926, R.C.M. 1935; amd. Sec. 42, Ch. 344, L. 1977; R.C.M. 1947, 93-1809.

Part 8

Juries of Inquest

3-15-801. Summoning the juries. Juries of inquest shall be summoned by the officer before whom the proceedings in which they are to sit are to be had or by any sheriff, constable, or policeman from the persons competent to serve as jurors, residents of the county, by notifying them orally that they are so summoned and of the time and place at which their attendance is required.

History: En. Sec. 300, C. Civ. Proc. 1895; re-en. Sec. 6362, Rev. C. 1907; re-en. Sec. 8916, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 235; re-en. Sec. 8916, R.C.M. 1935; R.C.M. 1947, 93-1604.

3-15-802. Manner of impaneling. The manner of impaneling juries of inquest is prescribed in the provisions of the different statutes relating to such inquests.

History: En. Sec. 350, C. Civ. Proc. 1895; re-en. Sec. 6372, Rev. C. 1907; re-en. Sec. 8927, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 254; re-en. Sec. 8927, R.C.M. 1935; R.C.M. 1947, 93-1810.

TITLE 4

RESERVED

TITLE 5

LEGISLATIVE BRANCH

Ch.
1. Congressional, Senatorial, and Representative Districts.
2. Legislature — Composition and Organization.
3. Special Sessions.
4. Bills.
5. Legislative Procedures.
6. Legislative Interns.
7. Lobbying.
Chapters 8 through 10 reserved.
11. Legislative Council and Publication of Laws.
12. Legislative Finance Act.
13. Legislative Audit Act.
14. Administrative Code Committee.
15. Legislative Consumer Committee — Consumer Counsel.
16. Environmental Quality Council.
17. Capitol Building and Planning Committee.
18. Revenue Oversight Committee.

CHAPTER 1

CONGRESSIONAL, SENATORIAL, AND REPRESENTATIVE DISTRICTS

Part 1 — Districting and Apportionment Commission

Section
5-1-101. Commission to redistrict and reapportion.
5-1-102. Composition of commission.
5-1-103. Vacancy on commission.
5-1-104. Compensation and expenses.
5-1-105. Restriction on commissioners seeking election to legislature.
5-1-106. Legislative council to provide technical and clerical services.
5-1-107. Assistance of state agencies.
5-1-108. Public hearing on plan.
5-1-109. Submission of plan to legislature.
5-1-110. Recommendations of legislature.
5-1-111. Final plan — dissolution of commission.

Part 1

Districting and Apportionment Commission

5-1-101. Commission to redistrict and reapportion. In each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts.

History: En. Sec. 1, Ch. 21, L. 1973; R.C.M. 1947, 43-108.

5-1-102. Composition of commission. The majority and minority leaders of each house shall each designate one commissioner. Two commissioners must be residents of the western congressional district and two commissioners must be residents of the eastern congressional district. The majority leader in each house shall have first choice of the congressional district from which he will select a commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

History: **En. Sec. 2, Ch. 21, L. 1973; R.C.M. 1947, 43-109.**

5-1-103. Vacancy on commission. (1) In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

(2) In the event the appointing authority at the time a vacancy occurs is of the opposite political party than that of the appointing authority that made the appointment that is vacant, the majority or minority leader of the same political party as the appointing authority that made the original appointment of the commissioner whose position is vacated shall designate the successor.

History: **En. Sec. 3, Ch. 21, L. 1973; R.C.M. 1947, 43-110; amd. Sec. 1, Ch. 16, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (2).

Effective Date: Section 2, Ch. 16, L. 1981, provided: "This act is effective on passage and approval." Approved February 26, 1981.

5-1-104. Compensation and expenses. Commissioners are entitled to compensation of $20 per day plus travel expenses, as provided for in 2-18-501 through 2-18-503, while attending commission meetings or carrying out the official duties of the commission.

History: **En. Sec. 4, Ch. 21, L. 1973; amd. Sec. 18, Ch. 439, L. 1975; R.C.M. 1947, 43-111.**

5-1-105. Restriction on commissioners seeking election to legislature. A member of the commission may not run for election to a legislative seat within 2 years after the districting and apportionment plan in which he participated becomes effective.

History: **En. Sec. 11, Ch. 21, L. 1973; R.C.M. 1947, 43-118.**

5-1-106. Legislative council to provide technical and clerical services. The executive director of the legislative council, under the direction of the commission, shall provide the technical staff and clerical services which the commission needs to prepare its districting and apportionment plan.

History: **En. Sec. 5, Ch. 21, L. 1973; R.C.M. 1947, 43-112.**

5-1-107. Assistance of state agencies. Upon request state agencies shall cooperate with the commission and furnish technical assistance and consulting personnel.

History: **En. Sec. 6, Ch. 21, L. 1973; R.C.M. 1947, 43-113.**

5-1-108. Public hearing on plan. Before the commission submits its plan to the legislature, it shall hold at least one public hearing on the plan at the state capitol. The commission may hold other hearings as it deems necessary.

History: **En. Sec. 7, Ch. 21, L. 1973; R.C.M. 1947, 43-114.**

5-1-109. Submission of plan to legislature. The commission shall submit its plan to the legislature by the 10th legislative day of the first regular session after its appointment or after the census figures are available.

History: **En. Sec. 8, Ch. 21, L. 1973; R.C.M. 1947, 43-115.**

5-1-110. Recommendations of legislature. Within 30 days after the commission submits its plan to the legislature, the legislature shall return the plan to the commission with its recommendations.

History: **En. Sec. 9, Ch. 21, L. 1973; R.C.M. 1947, 43-116.**

5-1-111. Final plan — dissolution of commission. Within 30 days after receiving the plan and the legislature's recommendations, the commission shall file its final plan with the secretary of state. Upon filing, the plan shall become law and the commission shall be dissolved.

History: **En. Sec. 10, Ch. 21, L. 1973; R.C.M. 1947, 43-117.**

CHAPTER 2

LEGISLATURE — COMPOSITION AND ORGANIZATION

Part 1 — General

Section

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Part 2 — Organization

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Part 1

General

5-2-101. Composition of legislature. The legislature consists of senators and representatives elected from the several senatorial and representative districts of the state in the number specified by law.

History: En. Sec. 150, Pol. C. 1895; re-en. Sec. 50, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1921; re-en. Sec. 51, R.C.M. 1921; re-en. Sec. 51, R.C.M. 1935; R.C.M. 1947, 43-201.

5-2-102. Term of office. The term of office of a senator is 4 years or until his successor is elected and qualified and of a representative 2 years or until his successor is elected and qualified. The term of service shall begin on the first Monday of January next succeeding his election. If a senator is elected to fill a vacancy, his term of service shall begin on the next day after his election.

History: En. Sec. 151, Pol. C. 1895; re-en. Sec. 51, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1909; re-en. Sec. 52, R.C.M. 1921; Cal. Pol. C. Sec. 226; re-en. Sec. 52, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1975; amd. Sec. 1, Ch. 198, L. 1977; R.C.M. 1947, 43-202.

5-2-103. Time and place of meeting. Each regular session of the legislature shall be convened at the seat of government at 12 noon on the first Monday of January of each odd-numbered year or, if January 1 is a Monday, on the first Wednesday. The legislature shall meet at other times when convened by the governor or by the written request of a majority of the legislators or, when the legislature is in session, by a recorded vote of a majority of the legislators.

History: En. Sec. 160, Pol C. 1895; re-en. Sec. 55, Rev. C. 1907; re-en. Sec. 55, R.C.M. 1921; Cal. Pol. C. Sec. 235; re-en. Sec. 55, R.C.M. 1935; amd. Sec. 1, Ch. 279, L. 1973; amd. Sec. 5, Ch. 309, L. 1977; R.C.M. 1947, 43-205.

5-2-104. Appointment to or candidacy for other offices. (1) No member of the legislature may, during the term for which he was elected, be appointed to any civil office under the state. A member of the legislature may become a candidate for public office during his term.

(2) A member of the legislature who is elected to other public office shall resign from the legislature prior to assuming the office to which he was newly elected.

History: En. 43-202.2 and 43-202.3 by Secs. 2, 3, Ch. 91, L. 1977; R.C.M. 1947, 43-202.2, 43-202.3.

Part 2

Organization

5-2-201. Presession caucus. As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the legislature are elected, the majority and minority parties of each house of the legislature shall hold a presession caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees, and hire any necessary employees.

History: En. Sec. 2, Ch. 274, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 1, Ch. 392, L. 1975; amd. Sec. 19, Ch. 439, L. 1975; amd. Sec. 1, Ch. 103, L. 1977; R.C.M. 1947, 43-218(1).

5-2-202. Presession activity. (1) Members of the legislature elected to leadership positions during the presession caucus and members appointed to the legislative administration committees, committee on committees, and rules committees may meet and perform necessary organizational tasks prior to the session, including but not limited to appointing committees, hiring staff, and assigning space and seating.

(2) Members of the house appropriations committee and of the senate finance and claims committee named at the presession caucus may begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests.

History: En. 43-218.1 by Sec. 2, Ch. 103, L. 1977; R.C.M. 1947, 43-218.1(1); amd. Sec. 1, Ch. 551, L. 1979.

5-2-203. Compensation and expenses. (1) Members of the legislature attending the presession caucus are entitled to receive compensation and expenses as provided in 5-2-302.

(2) While engaged in presession business, members elected to leadership positions and members of the committees named in 5-2-202 are entitled to receive compensation and expenses as provided in 5-2-302.

History: (1)En. Sec. 2, Ch. 274, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 1, Ch. 392, L. 1975; amd. Sec. 19, Ch. 439, L. 1975; amd. Sec. 1, Ch. 103, L. 1977; Sec. 43-218, R.C.M. 1947; (2)En. 43-218.1 by Sec. 2, Ch. 103, L. 1977; Sec. 43-218.1, R.C.M. 1947; R.C.M. 1947, 43-218(2), 43-218.1(2); amd. Sec. 2, Ch. 551, L. 1979.

5-2-204 through 5-2-210 reserved.

5-2-211. Certified rosters. The secretary of state shall prepare certified rosters from the official election records on file in his office for use in the organization of the senate and house of representatives.

History: En. Sec. 1, Ch. 18, L. 1969; R.C.M. 1947, 43-206.1.

5-2-212. Organization of senate. At 12 noon on the day appointed for the meeting of any regular session of the legislature, the senior member present must take the chair, call the senators and senators-elect to order, call over the senators from the certified roster prepared by the secretary of state, and then, from the certified roster prepared by the secretary of state, call over the senatorial districts and counties, in their order, from which members have been elected at the preceding election. After the same are called the members-elect must take the constitutional oath of office and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.

History: En. H.B. No. 69, p. 103, L. 1897; re-en. Sec. 163, Pol. C. 1895; re-en. Sec. 57, Rev. C. 1907; re-en. Sec. 57, R.C.M. 1921; Cal. Pol. C. Sec. 238; re-en. Sec. 57, R.C.M. 1935; amd. Sec. 2, Ch. 18, L. 1969; R.C.M. 1947, 43-207; amd. Sec. 17, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "the president of the senate, or in case of his absence or inability then" before "the senior member".

5-2-213. Organization of house of representatives. At the time specified in 5-2-212, the secretary of state, or in case of his absence or inability then the senior member-elect present, must take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts. After the same are called the members-elect must take the constitutional oath of office and assume their seats. The house of representatives may thereupon, if a quorum is present, proceed to elect its officers.

History: En. Sec. 164, Pol. C. 1895; re-en. Sec. 58, Rev. C. 1907; re-en. Sec. 58, R.C.M. 1921; Cal. Pol. C. Sec. 239; re-en. Sec. 58, R.C.M. 1935; amd. Sec. 3, Ch. 18, L. 1969; R.C.M. 1947, 43-208.

5-2-214. Oath to be entered on journals. An entry of the oath taken by the members of the legislature must be made on the journals of the proper houses, respectively.

History: En. Sec. 165, Pol. C. 1895; re-en. Sec. 59, Rev. C. 1907; re-en. Sec. 59, R.C.M. 1921; Cal. Pol. C. Sec. 240; re-en. Sec. 59, R.C.M. 1935; R.C.M. 1947, 43-209.

5-2-215. Election of officers. In all elections of officers of either branch of the legislature, a majority of all the votes given is necessary to a choice.

History: En. Sec. 8, p. 90, L. 1885; re-en. Sec. 1332, 5th Div. Comp. Stat. 1887; re-en. Sec. 166, Pol. C. 1895; re-en. Sec. 60, Rev. C. 1907; re-en. Sec. 60, R.C.M. 1921; re-en. Sec. 60, R.C.M. 1935; R.C.M. 1947, 43-210.

5-2-216. Tie vote. In the event there is a tie vote for the purposes of organizing the senate or the house of representatives then, for the purposes of organization, the political party's candidate for president of the senate or speaker of the house then having a member of his party as the governor of Montana shall be deemed to be elected.

History: En. Sec. 1, Ch. 25, L. 1973; R.C.M. 1947, 43-210.1.

5-2-217 through 5-2-220 reserved.

5-2-221. Officers and employees of the senate and house of representatives. (1) The officers of the senate include a president, a president pro tempore, a majority floor leader, a minority floor leader, a majority whip, and a minority whip.

(2) The officers of the house of representatives include a speaker, a speaker pro tempore, a majority floor leader, a minority floor leader, a majority whip, and a minority whip.

(3) The president and president pro tempore of the senate and the speaker and speaker pro tempore of the house shall be elected by the house of which they are a member.

(4) The majority floor leader, minority floor leader, majority whip, and minority whip of the senate and house shall be elected by their respective caucuses.

(5) A secretary of the senate, sergeant-at-arms, and chaplain shall be appointed by the president subject to confirmation by the senate, and a chief clerk of the house, sergeant-at-arms, and chaplain shall be appointed by the speaker subject to confirmation by the house.

History: En. 43-214.1 by Sec. 1, Ch. 186, L. 1974; amd. Sec. 1, Ch. 88, L. 1977; R.C.M. 1947, 43-214.1; amd. Sec. 1, Ch. 17, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a majority floor leader, a minority floor leader, a majority whip, and a minority whip" for language concerning the election or appointment of a secretary, chief clerk, chaplain, and sergeant-at-arms in (1) and (2). Rewrote subsection (3) and added (4) and (5).

Effective Date: Section 2, Ch. 17, L. 1981, provided: "This act is effective on passage and approval." Approved February 26, 1981.

Interim Study Committee Bill: Chapter 17, L. 1981 (HB 2), was introduced at the request of the interim Committee on Legislative Improvement. See committee report, Legislative Council, 1980.

5-2-222. Powers and duties of officers. The president and president pro tem of the senate and the speaker and speaker pro tem of the house of representatives may administer the oath of office to any senator or representative and to the officers and employees of their respective bodies. The officers and employees must perform such duties as are required by the rules or orders of the respective bodies which elect them.

History: En. Secs. 4 and 5, p. 170, L. 1891; re-en. Sec. 200, Pol. C. 1895; re-en. Sec. 67, Rev. C. 1907; re-en. Sec. 65, R.C.M. 1921; Cal. Pol. C. Sec. 252; re-en. Sec. 65, R.C.M. 1935; R.C.M. 1947, 43-301(part).

Part 3

Compensation and Expenses of Members and Officers

5-2-301. Compensation and expenses for members while in session. (1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade 8, step 2, classified state employee for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators are entitled to $45 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(3) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel:

(a) to the place of the holding of the session and to return to their place of residence at the conclusion of the session; and

(b) for one additional round trip to their place of residence during each session.

(4) In addition to the mileage allowance provided for in subsection (3), legislators are entitled to two additional round trips to their place of residence during each regular session upon submittal of an appropriate claim for such mileage reimbursement to the office of legislative council.

(5) Legislators are not entitled to any additional mileage allowance under subsection (3)(a) or (3)(b) for a special session if it is convened within 7 days of a regular session.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R.C.M. 1921; Cal. Pol. C. Sec. 266; re-en. Sec. 74, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963; amd. Sec. 1, Ch. 180, L. 1965; amd. Sec. 1, Ch. 274, L. 1969; amd. Sec. 1, Ch. 4, L. 1971; amd. Sec. 1, Ch. 72, L. 1973; amd. Sec. 1, Ch. 5, L. 1975; amd. Sec. 2, Ch. 392, L. 1975; amd. Sec. 20, Ch. 439, L. 1975; amd. Sec. 3, Ch. 103, L. 1977; R.C.M. 1947, 43-310; amd. Sec. 2, Ch. 650, L. 1979; amd. Sec. 1, Ch. 7, L. 1981; amd. Sec. 1, Ch. 144, L. 1981; amd. Sec. 3, Ch. 605, L. 1981.

Compiler's Comments

1981 Amendments: Chapters 7 and 605 increased legislative expense allowance from $40 to $45 during a session. Section 2, Ch. 7, L. 1981, provided that the increase applies after January 4, 1981.

Chapter 144 inserted subsection (4) allowing two additional trips.

Effective Date: Section 3, Ch. 7, L. 1981, provided: "This act is effective on passage and approval." Approved February 13, 1981.

Salary Commission Bill: Chapter 605, L. 1981 (HB 580), was introduced at the request of the Montana Salary Commission. See commission report, Legislative Council, 1980.

5-2-302. Compensation and expenses when legislature not in session. When the legislature is not in session, members of the legislative council, legislative subcommittees, and select and interim committees, while engaged in authorized committee business, are entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one full day's pay at the rate of a classified state employee, described in 5-2-301 for each 24-hour period of time (from midnight to midnight), or portion thereof, spent away from home on authorized committee business. However, if time spent for business other than authorized committee business results in lengthening a legislator's stay away from home into an additional 24-hour period, he may not be compensated for the additional day.

History: En. Sec. 1, Ch. 224, L. 1973; amd. Sec. 4, Ch. 103, L. 1977; R.C.M. 1947, 43-310.1; amd. Sec. 1, Ch. 1, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "authorized committee business" for "business authorized by the legislative council"; in (3) changed the salary from one-fourth day's pay for each 6 hours to a full day's pay for any portion of a day spent on authorized business; added the last sentence in (3).

Effective Date: Section 2, Ch. 1, L, 1981, provided: "This act is effective upon passage and approval." Approved January 29, 1981.

5-2-303. Participation in state benefits group. Individual members of the senate and the house of representatives may enroll in the state employees benefits group during the terms to which they have been elected. The provider of benefits shall enroll and collect employee contributions directly from such legislators. The employer contribution shall be paid from funds appropriated for that purpose.

History: En. 43-310.3 by Sec. 12, Ch. 563, L. 1977; R.C.M. 1947, 43-310.3; amd. Sec. 12, Ch. 555, L. 1979.

5-2-304. Continued participation in public retirement systems. (1) The purpose of this section is to provide a means whereby persons serving in the Montana legislature may continue their participation in public retirement systems governed by state law. This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(2) A person who is engaged in official duties as a member of the Montana legislature and who is otherwise eligible to participate as a member or contributor of a public retirement system governed by state law may but is not required to continue his participation in such public retirement system while engaged in his official duties as a legislator.

(3) A legislator who elects to continue participation as provided in subsection (2) shall:

(a) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a member of that system; or

(b) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a legislator.

(4) The state contribution shall be by legislative appropriation. It shall equal the appropriate employer contribution at the rate currently in effect in the system.

History: **En. 43-310.2 by Sec. 1, Ch. 333, L. 1977; R.C.M. 1947, 43-310.2.**

Part 4

Vacancies

5-2-401. Definitions. (1) For the purposes of this part, "vacancy" or "vacancies" has the same meaning as prescribed in 2-16-501.

(2) As used in 5-2-406, "term" means the 4-year period to which a senator is normally elected in the absence of a vacancy.

History: **(1)En. Sec. 3, Ch. 179, L. 1967; Sec. 43-217, R.C.M. 1947; (2)En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; Sec. 43-215, R.C.M. 1947; R.C.M. 1947, 43-215(4)(a), 43-217.**

5-2-402. Appointment by board of county commissioners. (1) When a vacancy occurs in the legislature, the vacancy shall be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board.

(2) The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature, and he shall act as the presiding officer of the meeting.

(3) The appointment of a legislator under this section must take place within 15 days after the vacancy occurs.

History: **En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(1), (2), (6).**

5-2-403. Appointee to be of same political party. (1) Whenever his predecessor served as a member of a political party, the appointee named under 5-2-402 shall be a member of the same political party and shall be selected from a list of three individuals provided by the county central committees, acting together, of the counties wherein a portion of the senate district lies. Whenever the appointing board is unable to elect an appointee from the submitted list, it shall request a second list of three names from the county central committees. The second list may not contain any of the names submitted on the first list. The appointing board shall then select an appointee from the individuals named on both lists.

(2) The provisions of this section do not apply if his predecessor served as an independent.

History: **En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(5).**

5-2-404. Procedure upon failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from the first and second lists of candidates as provided by 5-2-403(1) or from a list of three individuals if the predecessor served as an independent, in accordance with rules of selection adopted by the appointing board.

History: **En. Sec. 2, Ch. 179, L. 1967; amd. Sec. 3, Ch. 198, L. 1977; R.C.M. 1947, 43-216.**

5-2-405. Term of appointee. (1) Whenever the vacancy occurs in the house of representatives, the appointee shall serve until the end of the term to which his predecessor was elected.

(2) Whenever the vacancy occurs in the senate, the appointee shall serve until a successor can be elected as provided in 5-2-406.

History: **En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(3).**

5-2-406. Elections to fill vacancies in senate. (1) Whenever a vacancy occurs 50 days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 50 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election shall be utilized.

(b) Whenever the vacancy occurs on or after the 50th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the secretary of state on or before the 40th day prior to the general election.

(2) Whenever a vacancy occurs on or after the 50th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term.

History: **En. Sec. 1, Ch. 179, L. 1967; amd. Sec. 2, Ch. 198, L. 1977; R.C.M. 1947, 43-215(4)(b), (4)(c); amd. Sec. 1, Ch. 526, L. 1979.**

5-2-407. Anticipated vacancy. (1) Whenever it appears that a vacancy will exist in the legislature because of the inability of an elected legislator to take office at the commencement of the term to which he was elected, an appointee may be selected in advance of the commencement of the term under the provisions of 5-2-402 through 5-2-406.

(2) For purposes of determining the term of office of the appointee and the 15-day period of 5-2-402(3), the vacancy occurs on the first day of the term to which his predecessor was elected.

(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office.

History: **En. 43-216.1 by Sec. 4, Ch. 198, L. 1977; R.C.M. 1947, 43-216.1.**

CHAPTER 3

SPECIAL SESSIONS

Part 1 — Call of Special Session

Section
5-3-101. Convening of special session — limiting subjects.
5-3-102. Calling of a future special session when legislature is in session.
Sections 5-3-103 and 5-3-104 reserved.
5-3-105. Request by ten members to poll legislators.
5-3-106. Procedure for polling legislators.
5-3-107. Notice of time of approved special session.
5-3-108. Failure to approve special session — ballots void.

Part 1

Call of Special Session

5-3-101. Convening of special session — limiting subjects. The legislature may be convened in special session by the governor or at the written request of a majority of the members. The governor or the legislature may limit the special session to the subjects specified in the call.

History: **En. Sec. 1, Ch. 433, L. 1973; R.C.M. 1947, 43-319.**

5-3-102. Calling of a future special session when legislature is in session. When the legislature is in session, a majority of the members may by a written request call a special session to meet at a specified time.

History: **En. Sec. 2, Ch. 433, L. 1973; R.C.M. 1947, 43-320.**

5-3-103 and 5-3-104 reserved.

5-3-105. Request by ten members to poll legislators. (1) When the legislature is not in session, any 10 members may in writing request the secretary of state to poll the legislators to determine if a majority are in favor of a special session.

(2) The request must state:

(a) the conditions warranting the call of a special session;

(b) the purposes of the special session; and

(c) the proposed convening date and time of the special session.

History: **En. Sec. 3, Ch. 433, L. 1973; R.C.M. 1947, 43-321.**

5-3-106. Procedure for polling legislators. (1) Within 5 days after receiving a request, the secretary of state shall send to all legislators by certified mail a ballot which contains:

(a) the names of the legislators making the request;

(b) the reasons for calling the special session;

(c) the purposes of the special session;

(d) the requested convening date and time of the special session;

(e) the date by which legislators must return the ballot, which may not be more than 30 days after the date of the mailing of the ballots; and

(f) a stamped return envelope.

(2) The secretary of state shall keep the ballots secret until all legislators have voted or until the day after the date set for return of the ballots, whichever occurs first.

History: **En. Sec. 4, Ch. 433, L. 1973; amd. Sec. 1, Ch. 200, L. 1975; R.C.M. 1947, 43-322.**

5-3-107. Notice of time of approved special session. If a majority of the legislators reply affirmatively to the poll, the secretary of state shall notify each legislator of the time and day on which the special session shall convene.

History: **En. Sec. 6, Ch. 433, L. 1973; R.C.M. 1947, 43-324.**

5-3-108. Failure to approve special session — ballots void. If a majority of the legislators fail to approve the call for a special session within 30 days after the secretary of state mails the ballots or notifies each legislator, all ballots are void and may not be used again. The entire process must be repeated to call the legislature into special session.

History: **En. Sec. 7, Ch. 433, L. 1973; R.C.M. 1947, 43-325.**

CHAPTER 4

BILLS

Part 1 — General Provisions

Section
5-4-101. Form of enacting clause.
5-4-102. Limitation on title of referred legislation.

Part 2 — Fiscal Notes in Legislative Bills

5-4-201. Requirement of fiscal notes with committee reports.
5-4-202. Requests for notes by committee, house, or sponsor.
5-4-203. Budget director to prepare note.
5-4-204. Submission of fiscal note — distribution to legislators.
5-4-205. Contents of notes.
5-4-206. Background information to legislators on request.

Part 3 — Action by Governor on Bills

5-4-301. Bills received by the governor — how endorsed.
5-4-302. Approval of bills.
5-4-303. Line item veto.
5-4-304. Amendatory veto.
5-4-305. Bills returned without approval.
5-4-306. Return when legislature not in session.
5-4-307. Bills remaining with the governor.

Part 4 — Legislative History Act

5-4-401. Short title.
5-4-402. Purpose.
5-4-403. Definition of delegation of authority.
5-4-404. Statement of intent.

Part 1

General Provisions

5-4-101. Form of enacting clause. The enacting clause of every law shall be as follows: "Be it enacted by the Legislature of the State of Montana:".

History: En. Sec. 1, Ch. 7, L. 1974; R.C.M. 1947, 43-516.

5-4-102. Limitation on title of referred legislation. All bills referred by the legislature to a vote of the people shall have a title of no more than 100 words.

History: En. Sec. 17, Ch. 400, L. 1979.

Part 2

Fiscal Notes in Legislative Bills

5-4-201. Requirement of fiscal notes with committee reports. All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

History: En. Sec. 1, Ch. 53, L. 1965; R.C.M. 1947, 43-1001.

5-4-202. Requests for notes by committee, house, or sponsor. A fiscal note also may be requested on a bill, as the joint rules of the senate and the house of representatives may allow, by:

(1) a committee considering the bill;

(2) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(3) the sponsor, through the presiding officer.

History: En. Sec. 5, Ch. 53, L. 1965; amd. Sec. 1, Ch. 11, L. 1974; R.C.M. 1947, 43-1005.

5-4-203. Budget director to prepare note. The budget director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return same within 6 days. The director may request additional time to complete a note, which extension must be submitted to the presiding officer or committee requesting the note for approval.

History: En. Sec. 2, Ch. 53, L. 1965; amd. Sec. 1, Ch. 6, L. 1974; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 1, Ch. 321, L. 1975; R.C.M. 1947, 43-1002.

5-4-204. Submission of fiscal note — distribution to legislators. A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. If the bill is printed, the note shall be reproduced and placed on the members' desks.

History: En. Sec. 3, Ch. 53, L. 1965; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 2, Ch. 321, L. 1975; R.C.M. 1947, 43-1003.

5-4-205. Contents of notes. Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

History: En. Sec. 4, Ch. 53, L. 1965; R.C.M. 1947, 43-1004.

5-4-206. Background information to legislators on request. The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note.

History: En. Sec. 6, Ch. 53, L. 1965; amd. Sec. 97, Ch. 326, L. 1974; amd. Sec. 3, Ch. 321, L. 1975; R.C.M. 1947, 43-1006.

Part 3

Action by Governor on Bills

5-4-301. Bills received by the governor — how endorsed. Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. Each bill must, as soon as delivered to the governor, be endorsed as follows: "This bill was received by the governor this .... day of ...., 19..". The endorsement must be signed by an assistant authorized by the governor or by the governor himself.

History: En. Sec. 270, Pol. C. 1895; re-en. Sec. 100, Rev. C. 1907; re-en. Sec. 84, R.C.M. 1921; Cal. Pol. C. Sec. 309; re-en. Sec. 84, R.C.M. 1935; amd. Sec. 1, Ch. 31, L. 1973; R.C.M. 1947, 43-501.

5-4-302. Approval of bills. When the governor approves a bill, he must set his name thereto with the date of his approval and deposit the same in the office of the secretary of state.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R.C.M. 1921; Cal. Pol. C. Sec. 310; re-en. Sec. 85, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1973; R.C.M. 1947, 43-502(1).

5-4-303. Line item veto. If any bill presented to the governor contains several distinct items of appropriation of money, he may disapprove one or more items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects and his objections thereto. The governor must transmit to the house in which the bill originated (or to the secretary of state if the legislature is not in session) a copy of such statement, and the items so objected to must be separately reconsidered in the same manner as bills which have been disapproved by the governor.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R.C.M. 1921; Cal. Pol. C. Sec. 310; re-en. Sec. 85, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1973; R.C.M. 1947, 43-502(2).

5-4-304. Amendatory veto. The governor may return any bill to the originating house with his recommendations for amendment. Such house shall reconsider the bill under its rules relating to amendment offered in committee of the whole. The bill is then subject to the following procedures:

(1) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(2) If both houses approve the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(3) If both houses disapprove the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(4) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee:

(a) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(b) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

(5) The governor may not return the bill for amendment a second time.

History: En. Sec. 271, Pol. C. 1895; re-en. Sec. 101, Rev. C. 1907; re-en. Sec. 85, R.C.M. 1921; Cal. Pol. C. Sec. 310; re-en. Sec. 85, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1973; R.C.M. 1947, 43-502(3).

5-4-305. Bills returned without approval. (1) A bill or item or items of an appropriations bill become law whenever:

(a) the bill passes both houses of the legislature;

(b) the bill is returned by the governor without his signature and with objections thereto or, if it is a bill containing several items of appropriation of money, with objections to one or more items; and

(c) upon reconsideration the bill or item or items pass both houses by the constitutional majority.

(2) The bill or item or items shall be authenticated by a certificate endorsed on or attached to the bill or the copy of the statement of objections. The form of the certificate shall be: "This bill having been returned by the governor with his objections thereto and, after reconsideration, having passed both houses by the constitutional majority has become a law this .... day of ...., A.D. ...." or "The following items in the within statement (naming them) having, after reconsideration, passed both houses by the constitutional majority have become a law this .... day of ...., A.D. ...". The endorsement, signed by the president of the senate and the speaker of the house, is sufficient authentication of the bill or item or items.

(3) The authenticated bill or statement shall be delivered to the governor, who shall deposit it with the laws in the office of the secretary of state.

History: En. Sec. 272, Pol. C. 1895; re-en. Sec. 102, Rev. C. 1907; re-en. Sec. 86, R.C.M. 1921; Cal. Pol. C. Sec. 311; re-en. Sec. 86, R.C.M. 1935; amd. Sec. 7, Ch. 309, L. 1977; R.C.M. 1947, 43-503.

5-4-306. Return when legislature not in session. (1) If, on the day the governor desires to return a bill without his approval and with his objections thereto to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house. Such delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of such delivery and of the time when and the person to whom such delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons for the veto to the secretary of state. The secretary of state shall immediately mail a copy of the bill and the veto message to each member of the legislature.

(3) The legislature may reconvene to reconsider any bill so vetoed by using the statutory procedure provided for convening in special session.

History: En. Sec. 273, Pol. C. 1895; re-en. Sec. 103, Rev. C. 1907; re-en. Sec. 87, R.C.M. 1921; Cal. Pol. C. Sec. 312; re-en. Sec. 87, R.C.M. 1935; amd. Sec. 1, Ch. 63, L. 1973; R.C.M. 1947, 43-504.

5-4-307. Bills remaining with the governor. (1) A bill which has passed both houses of the legislature and has not been returned by the governor within 5 days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned becomes law.

(2) The governor shall deliver the bill to the secretary of state and direct him to authenticate it by a certificate endorsed or attached thereon. The form of the certificate shall be: "This bill having remained with the governor 5 days, and the legislature being in session, it has become a law this .... day of ...., ..." or "This bill having remained with the governor 25 days, and the legislature being adjourned, it has become a law this .... day of ...., ...". The certificate shall be signed by the secretary of state and deposited with the laws in his office.

History: En. Sec. 274, Pol. C. 1895; re-en. Sec. 104, Rev. C. 1907; re-en. Sec. 88, R.C.M. 1921; Cal. Pol. C. Sec. 313; re-en. Sec. 88, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1973; amd. Sec. 8, Ch. 309, L. 1977; R.C.M. 1947, 43-505.

Part 4

Legislative History Act

5-4-401. Short title. This part may be cited as the "Legislative History Act".

History: En. 43-519 by Sec. 1, Ch. 560, L. 1977; R.C.M. 1947, 43-519.

5-4-402. Purpose. The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies. The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority.

History: En. 43-520 by Sec. 2, Ch. 560, L. 1977; R.C.M. 1947, 43-520.

5-4-403. Definition of delegation of authority. As used in 5-4-404, "delegation of authority" means a statutory authorization to:

(1) adopt rules implementing a statute; or

(2) license, as defined in 2-4-102, an activity or establishment regulated by statute.

History: **En. 43-521 by Sec. 3, Ch. 560, L. 1977; R.C.M. 1947, 43-521.**

5-4-404. Statement of intent. The legislature by its joint rules shall provide a procedure by which a statement of legislative intent shall be included with each bill containing a delegation of authority and may be included with all bills. A statement of intent shall be placed before each component of the legislature which sequentially considers the subject bill and may be amended in the same manner as the bill.

History: **En. 43-522 by Sec. 4, Ch. 560, L. 1977; R.C.M. 1947, 43-522.**

CHAPTER 5

LEGISLATIVE PROCEDURES

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Section

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Part 1

Witnesses Before Legislature

5-5-101. Subpoenas. (1) A subpoena requiring the attendance of any witness before either house of the legislature or a committee thereof may be issued by the president of the senate, speaker of the house, or the chairman of any committee before whom the attendance of the witness is desired.

(2) It is sufficient if:

(a) it states whether the proceeding is before the house of representatives, the senate, or a committee;

(b) it is addressed to the witness;

(c) it requires the attendance of such witness at a time and place certain;

(d) it is signed by the president of the senate, speaker of the house, or chairman of a committee.

History: En. Sec. 260, Pol. C. 1895; re-en. Sec. 95, Rev. C. 1907; re-en. Sec. 79, R.C.M. 1921; Cal. Pol. C. Sec. 300; re-en. Sec. 79, R.C.M. 1935; R.C.M. 1947, 43-401.

5-5-102. Service of subpoenas. The subpoena may be served by any elector of the state, and his affidavit that he delivered a copy to the witness is evidence of service.

History: En. Sec. 261, Pol. C. 1895; re-en. Sec. 96, Rev. C. 1907; re-en. Sec. 80, R.C.M. 1921; Cal. Pol. C. Sec. 301; re-en. Sec. 80, R.C.M. 1935; R.C.M. 1947, 43-402.

5-5-103. Contempt. If any witness neglects or refuses to obey such subpoena or, appearing, neglects or refuses to testify, the senate or house may, by resolution entered on the journal, commit him for contempt.

History: En. Sec. 262, Pol. C. 1895; re-en. Sec. 97, Rev. C. 1907; re-en. Sec. 81, R.C.M. 1921; Cal. Pol. C. Sec. 302; re-en. Sec. 81, R.C.M. 1935; R.C.M. 1947, 43-403.

5-5-104. Compelling attendance. Any witness neglecting or refusing to attend in obedience to a subpoena may be arrested by the sergeant-at-arms and brought before the senate or house. The only warrant of authority necessary to authorize the arrest is a copy of a resolution of the senate or house, signed by the president of the senate or speaker of the house and countersigned by the secretary or clerk.

History: En. Sec. 263, Pol. C. 1895; re-en. Sec. 98, Rev. C. 1907; re-en. Sec. 82, R.C.M. 1921; Cal. Pol. C. Sec. 303; re-en. Sec. 82, R.C.M. 1935; amd. Sec. 6, Ch. 309, L. 1977; R.C.M. 1947, 43-404.

5-5-105. Immunity of witness. (1) No person sworn and examined before either house of the legislature or any committee thereof can be held to answer criminally or be subject to any penalty or forfeiture for any fact or act touching which he is required to testify. No statement made or paper produced by any such witness is competent evidence in any criminal proceeding against such witness.

(2) Such witness cannot refuse to testify to any fact or to produce any paper touching which he is examined for the reason that his testimony or the production of such paper tends to disgrace him or render him infamous.

(3) Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

History: **En. Sec. 264, Pol. C. 1895; re-en. Sec. 99, Rev. C. 1907; re-en. Sec. 83, R.C.M. 1921; Cal. Pol. C. Sec. 304; re-en. Sec. 83, R.C.M. 1935; R.C.M. 1947, 43-405.**

Part 2

Organization

5-5-201. Power to administer oaths. The members of any committee may administer oaths to witnesses in any matter under examination.

History: **En. Secs. 4 and 5, p. 170, L. 1891; re-en. Sec. 200, Pol. C. 1895; re-en. Sec. 67, Rev. C. 1907; re-en. Sec. 65, R.C.M. 1921; Cal. Pol. C. Sec. 252; re-en. Sec. 65, R.C.M. 1935; R.C.M. 1947, 43-301(part).**

5-5-202. Interim activities of committees. During an interim when the legislature is not in session, all regularly appointed standing or select committees of either house not formally discharged prior to the final adjournment of the preceding session shall continue as such committees. They are empowered to continue to sit as such committees and may act through their joint subcommittees.

History: **En. Sec. 10, Ch. 431, L. 1973; R.C.M. 1947, 43-718; amd. Sec. 1, Ch. 138, L. 1979; amd. Sec. 1, Ch. 353, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "as provided in this title" and added "and may act through their joint subcommittees" at the end of the section.

Effective Date: Section 4, Ch. 353, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

5-5-203 through 5-5-210 reserved.

5-5-211. Appointment and composition of joint subcommittees. Senate joint subcommittee members shall be appointed by the committee on committees. House joint subcommittee members shall be appointed by the speaker. No legislator may serve on more than two interim joint subcommittees. The composition of each subcommittee shall be as follows:

(1) four members of the house, no more than two of whom may be of one political party; and

(2) four members of the senate, no more than two of whom may be of one political party.

History: **En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(1); amd. Sec. 1, Ch. 596, L. 1979; amd. Sec. 2, Ch. 353, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "Senate joint subcommittee members shall be appointed by the committee on committees. House joint subcommittee members shall be appointed by the speaker" for "Joint subcommittee members shall be appointed by the legislative council. The chairmen of the appropriate standing committees in each body shall recommend suggested members to serve on each subcommittee. The legislative council shall consider the recommendations, but is not bound thereby" at the beginning of the section; changed "shall" to "may" in the third sentence.

Effective Date: Section 4, Ch. 353, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

5-5-212. Implied resignation of subcommittee member — vacancies. If a subcommittee member misses more than two committee meetings or hearings without just cause when the legislature is not in session, the member is considered to have resigned and the vacancy shall be filled in the same manner as the original appointment. Any other vacancy shall be filled in the same manner.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec, 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(6).

5-5-213. Officers of subcommittees. Each subcommittee shall elect its chairman and vice-chairman from among its members. The chairman and vice-chairman may not be members of the same political party.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(2).

5-5-214. Interim activity. The subcommittees may perform their functions when the legislature is not in session. The personnel, data, and facilities of the legislative council shall be made available to such subcommittees.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(3).

5-5-215. Duties of subcommittees. (1) Each subcommittee shall accumulate, compile, analyze, and furnish such information relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to important issues of policy and questions of statewide importance, including but not limited to:

(a) the possibilities of consolidations of departments, commissions, boards, and institutions in state government for:

(i) the elimination of unnecessary activities and duplications in office personnel and equipment;

(ii) the coordination of activities;

(iii) the purpose of increasing efficiency of service or effecting economies; and

(iv) the purpose of studying and inquiring into the financial administration of state governments and subdivisions thereof, including the problems of assessment and collection of taxes; and

(b) all other matters pertaining to the function of the departments and branches of state government.

(2) Each subcommittee shall prepare such bills and resolutions as, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) Each subcommittee shall keep accurate records of its activities and proceedings.

History: En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(4).

5-5-216. Recommendations of subcommittees. A subcommittee appointed for the purpose of making a study designated by the legislative council may make recommendations for legislation. These recommendations and the study report shall be submitted to the legislature at the next regular session.

History: **En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(5); amd. Sec. 2, Ch. 596, L. 1979.**

5-5-217. Selection and assignment of interim studies. (1) Immediately following adjournment sine die, the legislative council shall prepare a list of study requests adopted. A copy of the list shall be distributed to each legislator with a request that the legislator rank the study requests in the order of importance he ascribes to them. The lists, with the priorities assigned, shall be returned to the legislative council.

(2) The legislative council shall review the priority lists returned by legislators, review estimated costs and staff assistance associated with the requested studies, and designate those studies to be assigned. In designating studies, the legislative council may combine requests as one study when the subject matter of those requests is closely related. The legislative council shall group related studies together and shall designate the number of subcommittees to be assigned studies.

(3) The legislative council shall inform the committee on committees and speaker of the house of those studies that have been selected and to which joint subcommittee each study has been assigned. The committee on committees and speaker shall then proceed under 5-5-211 to appoint the subcommittees.

History: **En. Sec. 4, Ch. 596, L. 1979; amd. Sec. 3, Ch. 353, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "subcommittees to be assigned studies" for "committees to be appointed" at the end of (2); substituted "committee on committees and speaker of the house" for "chairmen of the appropriate standing committees in each body" in the first sentence of (3); added "and to which joint subcommittee each study has been assigned" to the first sentence of (3); substituted "The committee on committees and speaker" for "Following receipt of the recommendations from the standing committee chairmen, the legislative council" in the last sentence of (3).

Effective Date: Section 4, Ch. 353, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

5-5-218 through 5-5-220 reserved.

5-5-221. Repealed. Sec. 5, Ch. 596, L. 1979.

History: **En. 43-717 by Sec. 9, Ch. 431, L. 1973; amd. Sec. 16, Ch. 309, L. 1977; R.C.M. 1947, 43-717(1), (2).**

5-5-222. Repealed. Sec. 5, Ch. 596, L. 1979.

History: **En. 43-717 by Sec. 9, Ch. 431, L. 1973; amd. Sec. 16, Ch. 309, L. 1977; R.C.M. 1947, 43-717(3).**

Part 3

Appointments by Governor

5-5-301. Governor to transmit list of appointments to legislature. Within 10 days after the meeting of the legislature, the governor must transmit to it a list of all appointments made by him, under the provisions of 2-16-506, during the recess of the legislature.

History: En. Sec. 371, Pol. C. 1895; re-en. Sec. 146, Rev. C. 1907; re-en. Sec. 125, R.C.M. 1921; Cal. Pol. C. Sec. 381; re-en. Sec. 125, R.C.M. 1935; R.C.M. 1947, 82-1302.

5-5-302. Nominations to senate to be in writing. Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which he is nominated.

History: En. Sec. 1000, Pol. C. 1895; re-en. Sec. 356, Rev. C. 1907; re-en. Sec. 424, R.C.M. 1921; Cal. Pol. C. Sec. 889; re-en. Sec. 424, R.C.M. 1935; R.C.M. 1947, 59-407.

5-5-303. Resolution of concurrence. Whenever the senate concurs in a nomination, its secretary must immediately deliver a copy of the resolution of concurrence, certified by the president and secretary, to the secretary of state and another copy, certified by the secretary, to the governor.

History: En. Sec. 1001, Pol. C. 1895; re-en. Sec. 357, Rev. C. 1907; re-en. Sec. 425, R.C.M. 1921; Cal. Pol. C. Sec. 890; re-en. Sec. 425, R.C.M. 1935; R.C.M. 1947, 59-408.

Part 4

Impeachment

5-5-401. Officers liable to impeachment. The governor, executive officers, heads of state departments, and judicial officers are liable to impeachment for felonies and misdemeanors or malfeasance in office.

History: Our present impeachment laws are substantially the same as the territorial acts which provided for trial by the council. See Secs. 41-62, pp. 196-199, Cod. Stat. 1871; re-en. as Secs. 41-62, 3d Div. Rev. Stat. 1879; re-en. as Secs. 41-63, 3d Div. Comp. Stat. 1887; re-en. Sec. 1500, Pen. C. 1895; re-en. Sec. 8972, Rev. C. 1907; re-en. Sec. 11668, R.C.M. 1921; Cal. Pen. C. Sec. 737; re-en. Sec. 11668, R.C.M. 1935; Sec. 94-5401, R.C.M. 1947; amd. Sec. 2, Ch. 5, L. 1973; redes. 95-2801 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 29, Ch. 309, L. 1977; R.C.M. 1947, 95-2801.

5-5-402. Sole power of impeachment. The sole power of impeachment vests in the house of representatives, the concurrence of two-thirds of all the members being necessary to the exercise thereof.

History: En. Sec. 1501, Pen. C. 1895; re-en. Sec. 8973, Rev. C. 1907; re-en. Sec. 11669, R.C.M. 1921; re-en. Sec. 11669, R.C.M. 1935; Sec. 94-5402, R.C.M. 1947; amd. Sec. 1, Ch. 10, L. 1973; redes. 95-2802 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2802(part).

5-5-403. Trial of impeachments. (1) Impeachment shall be tried by the senate, the court of impeachment, sitting for that purpose. The senators shall be upon oath or affirmation to do justice according to law and evidence.

(2) The court has jurisdiction to try impeachments presented by the house of representatives.

History: (1)Ap. p. Sec. 1501, Pen. C. 1895; re-en. Sec. 8973, Rev. C. 1907; re-en. Sec. 11669, R.C.M. 1921; re-en. Sec. 11669, R.C.M. 1935; Sec. 94-5402, R.C.M. 1947; amd. Sec. 1, Ch. 10, L. 1973; redes. 95-2802 by Sec. 29, Ch. 513, L. 1973; Sec. 95-2802, R.C.M. 1947; Ap. p. Sec. 6, C. Civ. Proc. 1895; re-en. Sec. 6240, Rev. C. 1907; re-en. Sec. 8786, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 36; re-en. Sec. 8786, R.C.M. 1935; Sec. 93-103, R.C.M. 1947; (2)En. Sec. 7, C. Civ. Proc. 1895; re-en. Sec. 6241, Rev. C. 1907; re-en. Sec. 8787, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 37; re-en. Sec. 8787, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1973; amd. Sec. 28, Ch. 309, L. 1977; Sec. 93-104, R.C.M. 1947; R.C.M. 1947, 93-103, 93-104, 95-2802(part).

5-5-404. Officers of the court. (1) The officers of the senate are officers of the court.

(2) When the governor or lieutenant governor is on trial, the chief justice of the supreme court shall preside.

History: (1)En. Sec. 8, C. Civ. Proc. 1895; re-en. Sec. 6242, Rev. C. 1907; re-en. Sec. 8788, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 38; Sec. 93-105, R.C.M. 1947; (2)En. Sec. 1501, Pen. C. 1895; re-en. Sec. 8973, Rev. C. 1907; re-en. Sec. 11669, R.C.M. 1921; re-en. Sec. 11669, R.C.M. 1935; Sec. 94-5402, R.C.M. 1947; amd. Sec. 1, Ch. 10, L. 1973; redes. 95-2802 by Sec. 29, Ch. 513, L. 1973; Sec. 95-2802, R.C.M. 1947; R.C.M. 1947, 93-105, 95-2802(part).

5-5-405 through 5-5-410 reserved.

5-5-411. Articles of impeachment. (1) All impeachments must be by resolution originated in and adopted by the house of representatives. The resolution shall be conducted through the house by managers elected by the house.

(2) The managers shall prepare articles of impeachment, present them at the bar of the senate, and prosecute them.

History: En. Sec. 1502, Pen. C. 1895; re-en. Sec. 8974, Rev. C. 1907; re-en. Sec. 11670, R.C.M. 1921; Cal. Pen. C. Sec. 738; re-en. Sec. 11670, R.C.M. 1935; Sec. 94-5403, R.C.M. 1947; redes. 95-2803 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 30, Ch. 309, L. 1977; R.C.M. 1947, 95-2803.

5-5-412. Delivery of articles to senate. When an officer is impeached by the house of representatives, the articles of impeachment must be delivered to the president of the senate.

History: En. Sec. 1503, Pen. C. 1895; re-en. Sec. 8975, Rev. C. 1907; re-en. Sec. 11671, R.C.M. 1921; Cal. Pen. C. Sec. 739; re-en. Sec. 11671, R.C.M. 1935; Sec. 94-5404, R.C.M. 1947; redes. 95-2804 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2804.

5-5-413. Suspension pending trial — filling vacancy. (1) Whenever articles of impeachment against any officer subject to impeachment are presented to the senate, such officer is temporarily suspended from his office and cannot act in his official capacity until he is acquitted.

(2) Upon such suspension of any officer other than the governor, his office must be at once temporarily filled by an appointment made by the governor, with the advice and consent of the senate. The term of the appointment is until the acquittal of the party impeached or, in case of his removal, until the vacancy is filled at the next election as required by law.

History: En. Sec. 1516, Pen. C. 1895; re-en. Sec. 8988, Rev. C. 1907; re-en. Sec. 11684, R.C.M. 1921; Cal. Pen. C. Sec. 751; re-en. Sec. 11684, R.C.M. 1935; Sec. 94-5417, R.C.M. 1947; redes. 95-2817 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2817.

5-5-414. Time of hearing — service of defendant. (1) The senate must assign a day for the hearing of the impeachment and inform the house of representatives thereof.

(2) The president of the senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than 10 days before the day fixed for the hearing.

History: En. Sec. 1504, Pen. C. 1895; re-en. Sec. 8976, Rev. C. 1907; re-en. Sec. 11672, R.C.M. 1921; Cal. Pen. C. Sec. 740; re-en. Sec. 11672, R.C.M. 1935; Sec. 94-5405, R.C.M. 1947; redes. 95-2805 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2805.

5-5-415. Service — how made. The service must be made upon the defendant personally or, if he cannot upon diligent inquiry be found within the state, the senate, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place and answer the articles of impeachment.

History: **En. Sec. 1505, Pen. C. 1895; re-en. Sec. 8977, Rev. C. 1907; re-en. Sec. 11673, R.C.M. 1921; Cal. Pen. C. Sec. 741; re-en. Sec. 11673, R.C.M. 1935; Sec. 94-5406, R.C.M. 1947; redes. 95-2806 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2806.**

5-5-416. Senate to be sworn. (1) At the time and place appointed and before the senate proceeds to act on the impeachment, the secretary must administer to the president of the senate, and the president of the senate to each of the members of the senate then present, an oath truly and impartially to hear, try, and determine the impeachment.

(2) No member of the senate can act or vote upon the impeachment or upon any question arising thereon without having taken such oath.

History: **En. Sec. 1510, Pen. C. 1895; re-en. Sec. 8982, Rev. C. 1907; re-en. Sec. 11678, R.C.M. 1921; Cal. Pen. C. Sec. 745; re-en. Sec. 11678, R.C.M. 1935; Sec. 94-5411, R.C.M. 1947; redes. 95-2811 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2811.**

5-5-417. Proceedings on failure to appear. If the defendant does not appear, the senate, upon proof of service or publication as provided in 5-5-414 and 5-5-415, may of its own motion or for cause shown assign another day for hearing the impeachment or may proceed in the absence of the defendant to trial and judgment.

History: **En. Sec. 1506, Pen. C. 1895; re-en. Sec. 8978, Rev. C. 1907; re-en. Sec. 11674 R.C.M. 1921; Cal. Pen. C. Sec. 742; re-en. Sec. 11674, R.C.M. 1935; Sec. 94-5407, R.C.M. 1947; redes. 95-2807 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2807.**

5-5-418. Counsel may be appointed. (1) If the defendant appears and is unable to procure the assistance of counsel, it is the duty of the president of the senate to appoint some suitable person to assist him in his defense.

(2) If the defendant is served by publication and fails to appear, it is the duty of the president of the senate to appoint some person or counsel to appear in his behalf and make defense for him.

History: **En. Sec. 1507, Pen. C. 1895; re-en. Sec. 8979, Rev. C. 1907; re-en. Sec. 11675, R.C.M. 1921; re-en. Sec. 11675, R.C.M. 1935; Sec. 94-5408, R.C.M. 1947; redes. 95-2808 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2808.**

5-5-419. Defendant's objection or answer. When the defendant appears, he may in writing object to the sufficiency of the articles of impeachment or he may answer the same by an oral plea of not guilty. The plea must be entered upon the journal and must put in issue every material allegation of the articles of impeachment.

History: **En. Sec. 1508, Pen. C. 1895; re-en. Sec. 8980, Rev. C. 1907; re-en. Sec. 11676, R.C.M. 1921; Cal. Pen. C. Sec. 743; re-en. Sec. 11676, R.C.M. 1935; Sec. 94-5409, R.C.M. 1947; redes. 95-2809 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2809.**

5-5-420. Overrule of objection — defendant's plea. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the senate, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, the senate must render judgment of conviction against him. If he pleads not guilty or refuses to plead, the senate must, at such time as it may appoint, proceed to try the impeachment.

History: En. Sec. 1509, Pen. C. 1895; re-en. Sec. 8981, Rev. C. 1907; re-en. Sec. 11677, R.C.M. 1921; Cal. Pen. C. Sec. 744; re-en. Sec. 11677, R.C.M. 1935; Sec. 94-5410, R.C.M. 1947; redes. 95-2810 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2810.

5-5-421. Two-thirds vote necessary to a conviction. The defendant cannot be convicted on impeachment without the concurrence of two-thirds of the members elected, voting by ayes and noes. If two-thirds of the members elected do not concur in a conviction, he must be acquitted.

History: En. Sec. 1511, Pen. C. 1895; re-en. Sec. 8983, Rev. C. 1907; re-en. Sec. 11679, R.C.M. 1921; Cal. Pen. C. Sec. 746; re-en. Sec. 11679, R.C.M. 1935; Sec. 94-5412, R.C.M. 1947; redes. 95-2812 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2812.

5-5-422. Judgment on conviction — how pronounced. After conviction the senate must, at such time as it may appoint, pronounce judgment in the form of a resolution entered upon the journals of the senate.

History: En. Sec. 1512, Pen. C. 1895; re-en. Sec. 8984, Rev. C. 1907; re-en. Sec. 11680, R.C.M. 1921; Cal. Pen. C. Sec. 747; re-en. Sec. 11680, R.C.M. 1935; Sec. 94-5413, R.C.M. 1947; redes. 95-2813 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2813.

5-5-423. Judgment on conviction — how finalized. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the senate.

History: En. Sec. 1513, Pen. C. 1895; re-en. Sec. 8985, Rev. C. 1907; re-en. Sec. 11681, R.C.M. 1921; Cal. Pen. C. Sec. 748; re-en. Sec. 11681, R.C.M. 1935; Sec. 94-5414, R.C.M. 1947; redes. 95-2814 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2814.

5-5-424 through 5-5-430 reserved.

5-5-431. Nature of the judgment. The judgment may be that the defendant be suspended or that he be removed from office and disqualified to hold any office of honor, trust, or profit under the state.

History: En. Sec. 1514, Pen. C. 1895; re-en. Sec. 8986, Rev. C. 1907; re-en. Sec. 11682, R.C.M. 1921; Cal. Pen. C. Sec. 749; re-en. Sec. 11682, R.C.M. 1935; Sec. 94-5415, R.C.M. 1947; redes. 95-2815 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2815.

5-5-432. Effect of judgment of suspension. If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

History: En. Sec. 1515, Pen. C. 1895; re-en. Sec. 8987, Rev. C. 1907; re-en. Sec. 11683, R.C.M. 1921; Cal. Pen. C. Sec. 750; re-en. Sec. 11683, R.c.M. 1935; Sec. 94-5416, R.C.M. 1947; redes. 95-2816 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2816.

5-5-433. Criminal prosecution not barred. If the offense for which the defendant is convicted on impeachment is also the subject of an indictment or information, the indictment or information is not barred thereby.

History: En. Sec. 1518, Pen. C. 1895; re-en. Sec. 8990, Rev. C. 1907; re-en. Sec. 11686, R.C.M. 1921; Cal. Pen. C. Sec. 753; re-en. Sec. 11686, R.C.M. 1935; Sec. 94-5419, R.C.M. 1947; redes. 95-2819 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2819.

CHAPTER 6

LEGISLATIVE INTERNS

Part 1 — Legislative Intern Program

Section

5-6-101. Short title.
5-6-102. Establishment of program.
5-6-103. Term of service.
5-6-104. Number of interns — where from.
5-6-105. Selection by schools.
5-6-106. Intern qualifications.
5-6-107. Assignment of interns.
5-6-108. Legislative council to establish guidelines.
5-6-109. Interns responsible to sponsor.
5-6-110. Program not mandatory.
5-6-111. Funding not obligatory.

Part 1

Legislative Intern Program

5-6-101. Short title. This chapter shall be known as the "Legislative Intern Act of 1974".

History: **En. 43-720 by Sec. 1, Ch. 305, L. 1974; R.C.M. 1947, 43-720.**

5-6-102. Establishment of program. It is the public policy of this state that there be a legislative intern program open to students attending the university of Montana, Montana state university, eastern Montana college, northern Montana college, western Montana college, and the Montana college of mineral science and technology. Any private college of higher education in the state may also establish an intern program for the purposes of this chapter.

History: **En. 43-721 by Sec. 2, Ch. 305, L. 1974; amd. Sec. 17, Ch. 309, L. 1977; R.C.M. 1947, 43-721.**

5-6-103. Term of service. Each legislative intern shall serve for 10 weeks during the regular session of the legislature.

History: **En. 43-722 by Sec. 3, Ch. 305, L. 1974; R.C.M. 1947, 43-722.**

5-6-104. Number of interns — where from. All institutions referred to in 5-6-102 may have at least one intern. An additional five positions may be chosen from applications submitted to the legislative council.

History: **En. 43-723 by Sec. 4, Ch. 305, L. 1974; R.C.M. 1947, 43-723.**

5-6-105. Selection by schools. The legislative interns shall be named by the presidents of the several colleges and universities. The students so selected may be enrolled in any program offered by the college or university.

History: **En. 43-724 by Sec. 5, Ch. 305, L. 1974; R.C.M. 1947, 43-724.**

5-6-106. Intern qualifications. (1) The legislative interns must have the following qualifications:

(a) at least one quarter of "state government" or its equivalent as a course of study at an institution of higher learning;

(b) attainment of at least the level of a junior at an institution of higher learning; and

(c) the necessary degree of scholastic achievement, leadership, and involvement in community affairs.

(2) Preference shall be given to Montana high school graduates.

History: En. 43-725 by Sec. 6, Ch. 305, L. 1974; amd. Sec. 18, Ch. 309, L. 1977; R.C.M. 1947, 43-725.

5-6-107. Assignment of interns. Each legislative intern is assigned to a legislator by the legislative council.

History: En. 43-726 by Sec. 7, Ch. 305, L. 1974; R.C.M. 1947, 43-726.

5-6-108. Legislative council to establish guidelines. Each legislative intern is subject to guidelines established by the legislative council.

History: En. 43-727 by Sec. 8, Ch. 305, L. 1974; R.C.M. 1947, 43-727.

5-6-109. Interns responsible to sponsor. Each legislative intern is directly responsible to his or her legislator.

History: En. 43-728 by Sec. 9, Ch. 305, L. 1974; R.C.M. 1947, 43-728.

5-6-110. Program not mandatory. An institution of higher learning may choose not to participate in the legislative intern program.

History: En. 43-729 by Sec. 10, Ch. 305, L. 1974; R.C.M. 1947, 43-729.

5-6-111. Funding not obligatory. The legislature shall not, under any condition, because of this chapter be obligated to fund this internship program.

History: En. 43-730 by Sec. 12, Ch. 305, L. 1974; R.C.M. 1947, 43-730.

CHAPTER 7

LOBBYING

Part 1 — General Provisions — Licenses

Section
5-7-101. Purposes of chapter — applicability.
5-7-102. Definitions.
5-7-103. Licenses — fees — eligibility.
5-7-104. Repealed. Sec. 20, Initiative No. 85, 1980.
5-7-105. Suspension of lobbying privileges.
Sections 5-7-106 through 5-7-110 reserved.
5-7-111. Commissioner to make rules.

Part 2 — Registration and Reports

5-7-201. Docket — contents.
5-7-202. Docket — public record.
5-7-203. Principal — name of lobbyist on docket.
5-7-204. Updating docket.
5-7-205. Repealed. Sec. 20, Initiative No. 85, 1980.
5-7-206. Repealed. Sec. 20, Initiative No. 85, 1980.
5-7-207. Report to legislature.

5-7-208. Principals to file accountings.
5-7-209. Payments prohibited unless reported — penalty for failure to report or for false statement.
5-7-210. Reimbursement.
5-7-211. Governmental responses not lobbying payments.
5-7-212. Audit of final accounting statements.
5-7-213. Disclosure by elected officials.

Part 3 — Prohibitions — Enforcement

5-7-301. Prohibition of practice without license and registration.
5-7-302. Unprofessional conduct — prohibited compensation.
5-7-303. Repealed. Sec. 20, Initiative No. 85, 1980.
5-7-304. Repealed. Sec. 20, Initiative No. 85, 1980.
5-7-305. Penalties and enforcement.

Chapter Compiler's Comments

1980 Initiative Title: The title to Initiative No. 85, 1980, read: "An act to require public disclosure of money spent to influence action of a public official. All individuals or businesses who employ lobbyists and spend more than $1000 a year to promote or oppose official action of a public official must give a complete accounting of all money spent. The proposal does not apply to individual citizens lobbying on their own behalf. Elected officials are required to publicly disclose their business interests. Criminal and civil penalties are provided for violations of the provisions of this initiative."

Severability: Section 21, Initiative No. 85, 1980, was a severability section.

Effective Date: Section 22, Initiative No. 85, 1980, provided: "This act shall be effective upon passage and approval by the voters of the state of Montana." Approved November 4, 1980.

Part 1

General Provisions — Licenses

5-7-101. Purposes of chapter — applicability. (1) The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, to provide for the licensing of lobbyists and the suspension or revocation of the licenses, to require elected officials to make public their business interests, and to require disclosure of the amounts of money spent for lobbying.

(2) Nothing in this chapter subjects any Montana citizen lobbying on his own behalf to any reporting requirements nor deprives any such citizen of the constitutional right to communicate with public officials.

History: En. Sec. 1, Ch. 157, L. 1959; amd. Sec. 19, Ch. 309, L. 1977; R.C.M. 1947, 43-801; amd. Sec. 1, I.M. No. 85, approved Nov. 4, 1980.

Compiler's Comments

1980 Initiative Amendment: Added ", to require elected officials to make public their business interests, and to require disclosure of the amounts of money spent for lobbying" at the end of subsection (1); and added subsection (2).

Wording Declared Unconstitutional: Use of the word "Montana" in subsection (2) was declared unconstitutional and without effect in *Montana Automobile Association v. Mike Greely,* 38 St. Rep. 1174 (1981).

5-7-102. Definitions. The following definitions apply in this chapter:

(1) "Individual" means a human being.

(2) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision thereof, or other organization or group of persons.

(3) "Public official" means any individual, elected or appointed, acting in his official capacity for the state or local government or any political subdivision thereof, but does not include those acting in a judicial or quasi-judicial capacity.

(4) "Lobbying" includes:

(a) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members thereof by any person other than a member of the legislature or a public official acting in his official capacity; and

(b) the practice of promoting or opposing official action by any public official in the event the person engaged in such practice expends $1,000 per calendar year or more exclusive of personal travel and living expenses.

(5) (a) "Lobbyist" means any person who engages in the practice of lobbying for hire.

(b) "Lobbyist" does not include:

(i) any individual Montana citizen acting solely on his own behalf; or

(ii) any individual working for the same principal as a licensed lobbyist, such individual having no personal contact with any public official on behalf of his principal.

(c) Nothing in this section deprives any citizen not lobbying for hire of the constitutional right to communicate with public officials.

(6) "Lobbying for hire" includes activities of any officers, agents, attorneys, or employees of any principal who are paid, reimbursed, or retained by such principal and whose duties include lobbying. When an individual is reimbursed only for his personal living and travel expenses, which together do not exceed $1,000 per calendar year, that individual shall not be considered to be lobbying for hire.

(7) "Unprofessional conduct" means:

(a) a violation of any of the provisions of this chapter;

(b) instigating action by any public official for the purpose of obtaining employment in opposition thereto;

(c) attempting to influence the action of any public official on any measure pending or to be proposed by:

(i) the promise of support or opposition at any future election;

(ii) promise of financial support;

(iii) making public any unsubstantiated charges of improper conduct on the part of any other lobbyist, any principal, or any legislator;

(iv) any improper economic reprisal or other unlawful retaliation against any public official; or

(v) any means other than argument on the merits thereof;

(d) attempting to influence a decision or vote by a hearing examiner or quasi-judicial officer in any contested case proceeding under Title 2, chapter 4, part 6, except as provided therein;

(e) attempting to knowingly deceive any public official with regard to the pertinent facts of an official matter or attempt to knowingly misrepresent pertinent facts of an official matter to any public official; or

(f) engaging in practices which reflect discredit on the practice of lobbying.

(8) "Principal" means any person who makes payments in excess of $1,000 per calendar year for any of the following:

(a) to engage a lobbyist; or

(b) in the case of a person other than an individual, to solicit, directly, indirectly, or by an advertising campaign, the lobbying efforts of another person.

(9) "Docket" means the register and reports of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(10) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value.

(11) "Payment to influence official action" means any of the following types of payment:

(a) direct or indirect payment to a lobbyist by a principal, as salary, fee, or compensation for expenses or for any other purpose;

(b) payment in support of or assistance to a lobbyist or lobbying activities, including, but not limited to, the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(12) "Business" means any holding or interest whose fair market value is greater than $1,000, in any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed individual, holding company, joint stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations.

(13) "Commissioner" means the commissioner of political practices.

(14) "Elected official" means a public official holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including, but not limited to legislators, public service commissioners, and district court judges. The term "official-elect" shall also apply only to such offices.

History: En. Sec. 2, Ch. 157, L. 1959; R.C.M. 1947, 43-802; amd. Sec. 2, I.M. No. 85, approved Nov. 4, 1980.

Compiler's Comments

1980 Initiative Amendment: Substituted "The following definitions apply in this chapter" for "The following words and phrases shall have the meanings respectively ascribed to them" at the beginning of the section; inserted subsections (1) through (3); changed "means" to "includes" at the beginning of subsection (4) and added subsection (4)(b); deleted "except in the manner authorized by 5-7-304" at the end of subsection (5)(a); inserted subsection (5)(b); substituted "deprives" for "shall be construed to deprive", changed "his" to "the" before "constitutional right" and changed "members of the legislature" to "public officials" in subsection (5)(c); changed "shall include" to "includes", substituted "paid, reimbursed, or retained" for "paid a regular salary", changed "a person" to "an individual", inserted "which together do not exceed $1,000 per calendar year," after "expenses," and changed "be" to "that individual" in subsection (6); deleted former subsection (7)(b), which read: "(b) soliciting employment from any principal"; changed "the introduction of legislation" to "action by any public official" in subsection (7)(b); changed "vote of legislators" to "action of any public official" in subsection (7)(c); deleted "by any means other than argument on the merits thereof, or" at the end of subsection (7)(c)(i); inserted "any principal" in (7)(c)(iii); inserted subsections (7)(c)(ii), (7)(c)(iv), (7)(c)(v), (7)(d), and (7)(e); deleted "or the legislature" after "lobbying" in subsection (7)(f); substituted present language of subsection (8) for: ""Principal" means: (a) any person, corporation, or association which engages a lobbyist or other person in connection with any legislation pending before the legislature or to be proposed affecting the pecuniary interest of such person, corporation, or association; or (b) any board, department, commission, or other agency of the state, any county, or municipal corporation which engages a lobbyist or other person in connection with any legislation pending or to be proposed affecting the statutory powers, duties, or appropriation of such agency, county, or municipal corporation"; substituted "register and reports of lobbyists and principals" for "register of licensed lobbyists" and changed "secretary of state" to "commissioner" in subsection (9); deleted former subsection (6), which defined "pecuniary interest"; added subsections (10) through (14); and made minor changes in grammar, punctuation, and phraseology.

Subsections and Wording Declared Unconstitutional: Subsections (7) (c) (i), (7) (c) (iv), (7) (c) (v), (7) (d), (7) (f), (8) (b), and the use of the word "Montana" in subsection (5) (b) (i) were declared unconstitutional and void in *Montana Automobile Association v. Mike Greely*, 38 St. Rep. 1171 (1981).

5-7-103. Licenses — fees — eligibility. (1) Any adult of good moral character who is a citizen of the United States and who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained in the office of the commissioner and filed therein. Upon approval of the application and receipt of the license fee of $10 by the commissioner, a license shall be issued which entitles the licensee to practice lobbying on behalf of one or more enumerated principals. Each license shall expire on December 31 of each even-numbered year or may be terminated at the request of the lobbyist.

(2) No application may be disapproved without affording the applicant a hearing. The hearing shall be held and the decision entered within 10 days of the date of the filing of the application.

(3) The fines and license fees collected under this chapter shall be deposited in the state treasury.

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965; amd. Sec. 20, Ch. 309, L. 1977; R.C.M. 1947, 43-803(1); amd. Sec. 3, I.M. No. 85, approved Nov. 4, 1980.

Compiler's Comments

1980 Initiative Amendment: Changed the "secretary of state" to "commissioner" three times, substituted "application and receipt" for "application by the secretary of state and payment", and inserted "enumerated" before "principals" in the third sentence, and substituted the last sentence for "Each license shall expire on December 31 of each odd-numbered year" in subsection (1); inserted "fines and" before "license fees", deleted "by the secretary of state" after "collected", and deleted "by him" after "deposited" in subsection (3).

5-7-104. Repealed. Sec. 20, Initiative No. 85, 1980.

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965; amd. Sec. 20, Ch. 309, L. 1977; R.C.M. 1947, 43-803(2).

5-7-105. Suspension of lobbying privileges. No lobbyist whose license has been suspended and no person who has been adjudged guilty of a violation of any provision of this chapter may engage in lobbying for hire until that person has been reinstated to the practice and duly licensed.

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965; amd. Sec. 20, Ch. 309, L. 1977; R.C.M. 1947, 43-803(3); amd. Sec. 4, I.M. No. 85, approved Nov. 4 , 1980.

Compiler's Comments

1980 Initiative Amendment: Deleted "or revoked" after "suspended"; substituted "adjudged guilty" for "convicted"; inserted "for hire" after "engage in lobbying"; substituted "that person" for "he"; and deleted "of lobbying" after "practice".

5-7-106 through 5-7-110 reserved.

5-7-111. Commissioner to make rules. (1) The commissioner shall promulgate and publish rules necessary to carry out the provisions of this chapter in conformance with the Montana Administrative Procedure Act and, in particular, shall provide rules necessary to allocate salary, expenses, and any other payments between lobbying activities and other activities not connected with lobbying for any person whose activities are not solely limited to lobbying.

(2) Such rules shall be designed to effect and promote the purposes of this chapter, express or implied. Such rules shall be as simple and easily complied with as possible.

History: En. Sec. 17, I.M. No. 85, approved Nov. 4, 1980.

Compiler's Comments

Incorporation into Existing Law: Section 17, Initiative No. 85, 1980 (5-7-111), was enacted without a codification instruction. It was apparently intended to become an integral part of Title 5, ch. 7, and the Code Commissioner has codified it accordingly.

Part 2

Registration and Reports

5-7-201. Docket — contents. The commissioner shall make available to the public the information required by this chapter, including but not limited to the name and business address of each lobbyist, the name and business address of his principal, and the subject or subjects to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest. The docket entry for each principal shall also indicate the principal's required reports of payments to influence official action by a public official.

History: **En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(part); amd. Sec. 5, I.M. No. 85, approved Nov. 4, 1980.**

Compiler's Comments

1980 Initiative Amendment: Substituted "The commissioner ... but not limited to" for "The secretary of state shall prepare and keep a docket in which shall be entered"; deleted "of legislation" after "subjects"; added the last sentence; and made a minor change in grammar.

5-7-202. Docket — public record. Such docket shall be a public record and open to the inspection of any individual upon demand at any time during the regular business hours of the office of the commissioner.

History: **En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(part); amd. Sec. 6, I.M. No. 85, approved Nov. 4, 1980.**

Compiler's Comments

1980 Initiative Amendment: Substituted "individual" for "citizen" and "commissioner" for "secretary of state".

5-7-203. Principal — name of lobbyist on docket. Except as provided in 5-7-304, every principal who employs any lobbyist shall within 1 week after such employment cause the name of said lobbyist to be entered upon the docket. It shall also be the duty of the lobbyist to enter his name upon the docket. Upon the termination of such employment, such fact may be entered opposite the name of the lobbyist either by the lobbyist or the principal.

History: **En. Sec. 4, Ch. 157, L. 1959; R.C.M. 1947, 43-804.**

5-7-204. Updating docket. Any principal employing any lobbyist shall, when further subjects of legislation are introduced or arise which such lobbyist is to promote or oppose, make or cause to be made additional entries in the docket stating such employment so that the docket will show at all times all subjects of legislation in relation to which the lobbyist is employed or the general statement provided in 5-7-201.

History: **En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(2).**

5-7-205. Repealed. Sec. 20, Initiative No. 85, 1980.

History: **En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(3).**

5-7-206. Repealed. Sec. 20, Initiative No. 85, 1980.

History: **En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(2).**

5-7-207. Report to legislature. Beginning with the first Tuesday following the beginning of any regular or special session of the legislature and on the first Tuesday of every month thereafter during which the legislature is in session, the commissioner shall from his records report to each member of each house of the legislature the names of lobbyists registered under this chapter, not previously reported, the names of the principals whom they represent as lobbyists, and the subjects of legislation in which each principal is interested.

History: En. Sec. 5, Ch. 157, L. 1959; R.C.M. 1947, 43-805(part); amd. Sec. 7, I.M. No. 85, approved Nov. 4, 1980.

Compiler's Comments

1980 Initiative Amendment: Changed "first week" to "first Tuesday" near the beginning; substituted "the first Tuesday of every month thereafter during which the legislature is in session" for "every Tuesday thereafter for the duration of such session"; substituted "commissioner" for "secretary of state"; inserted "member of each" before "house"; substituted "principals" for "persons"; substituted "each principal is" for "they are"; and made minor changes in grammar.

5-7-208. Principals to file accountings. (1) A principal subject to this chapter shall file with the commissioner an accounting of payments made to influence the official action of a public official.

(2) If such payments are made solely to influence legislative action, such accounting shall be made:

(a) before February 16th of any year the legislature is in session and shall include all payments made in that calendar year prior to February 1;

(b) before the 16th day of the calendar month following any calendar month in which the principal spent $5,000 or more and shall include all payments made during the prior calendar month; and

(c) within 60 days following adjournment of such session and shall include all payments made during such session, except as has previously been reported.

(3) If such payments are made to influence any other official action by a public official or made to influence such other action and legislative action, such accounting shall be made:

(a) before February 16th of the calendar year following such payments and shall include all payments made during the prior calendar year; and

(b) before the 16th day of the calendar month following any calendar month in which the principal spent $5,000 or more and shall include all payments made during the prior calendar month.

(4) If no such payments are made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a) above, the principal shall file a report stating such.

(5) Each accounting filed under this section shall:

(a) list all payments for lobbying in each of the following categories:

(i) original and derivative research (for which the cost may be estimated if necessary) done to support a lobbying argument or presentation;

(ii) publication and distribution of each publication, except that the cost of a newsletter or leaflet distributed to the membership of a principal need not be reported unless over one-half of that newsletter or leaflet is devoted to lobbying matters;

(iii) other printing;

(iv) news media;

(v) advertising, including production costs;

(vi) postage;

(vii) travel and personal living expenses;

(viii) salaries and fees, including allowances, rewards, and contingency fees;

(ix) entertainment, including all foods and refreshments;

(x) telephone and telegraph; and

(xi) other office expenses;

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring $10 or more benefit to any public official; and

(ii) each separate payment conferring $100 or more benefit to more than one public official, regardless of individual benefit, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee which amounts to $250 or more when aggregated over the period of 1 calendar year paid to the principal, regardless of whether it was paid solely for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which such payment was earmarked;

(d) list each political contribution, including anything of value, paid to any candidate for elective public office, to any committee established to support or oppose a candidate for elective public office, or to any committee to support or oppose any initiative, referendum, or other ballot issue, whether such payment is made directly or indirectly by the principal or any lobbyist who received compensation or reimbursement for such payment from the principal;

(e) list each official action which the principal or his agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against such action; and

(f) be kept by the commissioner for a period of 10 years.

History: **En. Sec. 11, I.M. No. 85, approved Nov. 4, 1980.**

Compiler's Comments

Incorporation into Existing Law: Sections 11 through 16, Initiative No. 85, 1980 (5-7-208 through 5-7-213), were enacted without a codification instruction. They were apparently intended to become integral parts of Title 5, chapter 7, and the Code Commissioner has codified them accordingly.

Subsections Declared Unconstitutional: Subsections (5) (a) (i), (5) (a) (ii), (5) (a) (iv), and (5) (d), and the language "regardless of whether it was paid solely" in subsection (5) (c) were declared unconstitutional and therefore void in *Montana Automobile Association v. Mike Greely*. 38 St. Rep. 1174 (1981).

5-7-209. Payments prohibited unless reported — penalty for failure to report or for false statement. A principal may not make payments to influence official action by any public official unless that principal files the reports required under this chapter. A principal who fails to file a required report is subject to the penalty provided in 5-7-305 as well as any civil action provided for in that section. A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn falsification to authorities.

History: **En. Sec. 12, I.M. No. 85, approved Nov. 4, 1980.**

5-7-210. Reimbursement. Whenever a lobbyist invites a public official to attend a function which the lobbyist or his principal has fully or partially funded or sponsored, or whenever a lobbyist offers a public official a gift, the lobbyist must, upon request, supply the recipient public official with the benefit's true or estimated cost and allow the public official to reimburse.

Such expenditures must be itemized in the principal's reports with a notation "reimbursed by benefactee".

History: **En. Sec. 13, I.M. No. 85, approved Nov. 4, 1980.**

5-7-211. Governmental responses not lobbying payments. Budget preparation or response to requests of a house or committee of the legislature by any governmental entity shall not be considered lobbying payments for the purposes of this chapter.

History: **En. Sec. 14, I.M. No. 85, approved Nov. 4, 1980.**

5-7-212. Audit of final accounting statements. (1) The commissioner shall examine and may audit the accountings filed under 5-7-208 and shall investigate any irregularities and report any apparent violations of this chapter to the attorneys having authority to prosecute. The lobbyist is required to provide and the principal is required to obtain and keep for a period of 7 years from the date of filing all records supporting the accountings filed under 5-7-208.

(2) All such records shall be open to inspection on request of the commissioner or an attorney having authority to prosecute violations of this chapter. The commissioner and such attorneys are given the power to:

(a) subpoena and compel attendance;

(b) issue enforceable civil investigative demands;

(c) take evidence; and

(d) require the production of any books, correspondence, memoranda, bank account statements, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of this chapter.

History: **En. Sec. 15, I.M. No. 85, approved Nov. 4, 1980.**

5-7-213. Disclosure by elected officials. (1) Prior to December 15 of each even-numbered year, each elected official or official-elect shall file with the commissioner a business disclosure statement on a form provided by the commissioner. The statement shall provide the following information: the name, address, and type of business of such individual and each member of such individual's immediate family. For this purpose "immediate family" includes the individual's spouse and minor children only.

(2) No such individual may assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until such statement has been filed.

(3) The commissioner shall make such business disclosure statements available to any individual upon request.

History: **En. Sec. 16, I.M. No. 85, approved Nov. 4, 1980.**

Part 3

Prohibitions — Enforcement

5-7-301. Prohibition of practice without license and registration. (1) No individual may practice as a lobbyist unless that individual has been licensed under 5-7-103 and listed on the docket as employed in respect to all the matters he is promoting or opposing.

(2) No principal may directly or indirectly authorize or permit any lobbyist employed by that principal to practice lobbying until the lobbyist is duly licensed and the names of the lobbyist and the principal are duly entered on the docket.

History: **En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(part); amd. Sec. 8, I.M. No. 85, approved Nov. 4, 1980.**

Compiler's Comments

1980 Initiative Amendment: Substituted "No individual" for "No person" at the beginning, substituted "that individual" for "he" before "has been licensed", deleted "unless he is" before "listed on the docket" in (1); substituted "that principal" for "him" after "employed by", deleted "in respect to any legislation affecting the pecuniary interest of the principal" after "practice lobbying", substituted "lobbyist and the principal are" for "lobbyist is" in (2); and made minor changes in grammar.

5-7-302. Unprofessional conduct — prohibited compensation. (1) No lobbyist or principal shall engage in or directly or indirectly authorize any unprofessional conduct.

(2) No person may be employed as a lobbyist for a compensation dependent in any manner upon the passage or defeat of any proposed or pending official action by a public official or upon any other contingency connected with such action.

History: **En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(part); amd. Secs. 9, 10, I.M. No. 85, approved Nov. 4, 1980.**

Compiler's Comments

1980 Initiative Amendment: Inserted subsection (1); substituted "official action by a public official" for "legislation", changed "the action" to "such action", and deleted "of the legislature, of either branch thereof, or of any committee thereof" in (2).

Incorporation into Existing Law: Section 10, Initiative No. 85, 1980 (5-7-302(1)), was enacted without a codification instruction. It was apparently intended to become an integral part of Title 5, ch. 7, and the Code Commissioner has codified it accordingly.

Subsection Declared Unconstitutional: Subsection (2) was declared unconstitutional and void in *Montana Automobile Association v. Mike Greely,* 38 St. Rep. 1171 (1981).

5-7-303. Repealed. Sec. 20, Initiative No. 85, 1980.

History: **En. Sec. 6, Ch. 157, L. 1959; amd. Sec. 21, Ch. 309, L. 1977; R.C.M. 1947, 43-806(3).**

5-7-304. Repealed. Sec. 20, Initiative No. 85, 1980.

History: **En. Sec. 7, Ch. 157, L. 1959; R.C.M. 1947, 43-807.**

5-7-305. Penalties and enforcement. (1) Any person violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail not more than 6 months or by a fine not exceeding $200, or both.

(2) Any person who violates any of the provisions of this chapter shall be subject to civil penalties of not less than $250 and not more than $7,500 according to the discretion of the district court, as court of original jurisdiction. A lobbyist who violates any of the provisions of this chapter shall have his license suspended or revoked according to the discretion of the court. Any public official holding elective office adjudged in violation of the provisions of this act is additionally subject to recall under Montana Recall Act, 2-16-601, et seq., and such violation shall constitute an additional basis for recall to those mentioned in 2-16-603(3).

(3) The attorney general, commissioner, or the county attorney of the county in which the violation takes place may bring criminal or civil actions in the name of the state for any appropriate criminal or civil remedy.

(4) If a prosecution is undertaken by the commissioner or any county attorney, all costs associated with the prosecution shall be paid by the state of Montana.

(5) (a) Any individual who has notified the commissioner, the attorney general, and the appropriate county attorney in writing that there is reason to believe that some portion of this chapter is being violated may himself bring in the name of the state an action (hereinafter referred to as a citizen's action) authorized under this chapter if:

(i) the attorney general and the appropriate county attorney have failed to commence an action hereunder within 40 days after such notice; and

(ii) said attorneys then fail to commence an action within 10 days after a written notice delivered to them advising them that a citizen's action will be brought if they do not bring an action.

(b) Each notification shall toll the statute of limitations applicable until the expiration of the waiting period.

(c) If the individual who brings the citizen's action prevails, he shall be entitled to be reimbursed by the state of Montana for costs and attorney's fees incurred; provided that in the case of a citizen's action which is dismissed and which the court also finds was brought without reasonable cause, the court may order the individual commencing the action to pay all costs of trial and reasonable attorney's fees incurred by the defendant.

(6) No civil action may be brought under this section more than 7 years after the occurrence of the facts which give rise to the action.

(7) All civil penalties imposed pursuant to this section shall be deposited in the state general fund.

(8) A hearing under this chapter shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible but at least 20 days after the filing of the charges and shall take precedence over all other matters pending before the court.

(9) If the court finds for the plaintiff, judgment shall be rendered revoking or suspending the license and the clerk of court shall file a certified copy of the judgment with the commissioner.

History: (1)En. Sec. 8, Ch. 157, L. 1959; R.C.M. 1947, 43-808; (2) thru (9)En. Sec. 18, I.M. No. 85, approved Nov. 4, 1980.

Compiler's Comments

Incorporation into Existing Law: Section 18, Initiative No. 85, 1980 (5-7-305(2) through (9)), was enacted without a codification instruction. It was apparently intended to become an integral part of Title 5, chapter 7, and the Code Commissioner has codified it accordingly.

CHAPTERS 8 THROUGH 10

RESERVED

CHAPTER 11

LEGISLATIVE COUNCIL AND PUBLICATION OF LAWS

Part 1 — Composition—Powers and Duties—Personnel

Section
5-11-101. Appointment and composition of council.
5-11-102. Term.

5-11-103. Vacancies.
5-11-104. Officers — rules of procedure — records.
5-11-105. Powers and duties of council.
5-11-106. Authority to investigate and examine.
5-11-107. Powers relating to hearings.
Sections 5-11-108 through 5-11-110 reserved.
5-11-111. Executive director, personnel, and consultants.
5-11-112. Functional divisions.

Part 2 — Dissemination of Laws and Proceedings

5-11-201. Journals — how authenticated.
5-11-202. Printing of the house and senate journals and session laws.
5-11-203. Distribution of senate and house journals and session laws.
5-11-204. Secretary of state to assign chapter numbers to new laws.
5-11-205. Publication of laws — format.
5-11-206. Index.
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5-11-208. Expenses.
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5-11-211. Definitions.
5-11-212. Fees for proceedings.
5-11-213. Exclusions.
5-11-214. Exemptions from fees.

Part 3 — Interstate Cooperation

5-11-301. Functions of legislative council — interstate cooperation.
5-11-302. Council of state governments.

Part 1

Composition — Powers and Duties — Personnel

5-11-101. Appointment and composition of council. There is a legislative council which consists of:

(1) four members of the house of representatives appointed by the speaker of the house with the advice of the majority and minority leaders of the house, no more than two of whom may be of the same political party; and

(2) four members of the senate appointed by the committee on committees of the senate, no more than two of whom may be of the same political party.

History: **En. Sec. 1, Ch. 34, L. 1957; amd. Sec. 1, Ch. 431, L. 1973; amd. Sec. 10, Ch. 309, L. 1977; R.C.M. 1947, 43-709(1).**

5-11-102. Term. Membership on the council is for 2 years and terminates with the appointment of a new council or on the 50th legislative day of the next regular session following the one in which the appointment was made, whichever event occurs first. A new council shall be appointed no later than the 50th day of each regular session.

History: **En. Sec. 1, Ch. 34, L. 1957; amd. Sec. 1, Ch. 431, L. 1973; amd. Sec. 10, Ch. 309, L. 1977; R.C.M. 1947, 43-709(2).**

5-11-103. Vacancies. A vacancy on the legislative council occurring when the legislature is not in session shall be filled by the selection of another member by the same method as the original appointment.

History: En. Sec. 1, Ch. 34, L. 1957; amd. Sec. 1, Ch. 431, L. 1973; amd. Sec. 10, Ch. 309, L. 1977; R.C.M. 1947, 43-709(3).

5-11-104. Officers — rules of procedure — records. The legislative council shall organize immediately following appointment by electing one of its members as its chairman and by electing such other officers from among its membership as the council may deem desirable. The council is empowered to adopt rules of procedure and to make all arrangements for its meetings and to carry out the purpose for which it is created. The council is directed to keep accurate records of its activities and proceedings.

History: En. Sec. 7, Ch. 34, L. 1957; amd. Sec. 7, Ch. 431, L. 1973; R.C.M. 1947, 43-715.

5-11-105. Powers and duties of council. (1) If a question of statewide importance arises when the legislature is not in session and a subcommittee has not been appointed to consider the question, the legislative council shall assign the question to an appropriate subcommittee.

(2) The legislative council shall supervise the activities of the council staff.

(3) The legislative council shall assist in the preparation and submission of all standing and select committee and subcommittee reports and recommendations to the legislature.

(4) This section shall not be construed to permit the council to approve or disapprove of any substantive portions or recommendations of a standing or select committee or subcommittee report.

History: En. Sec. 2, Ch. 34, L. 1957; amd. Sec. 2, Ch. 431, L. 1973; amd. Sec. 11, Ch. 309, L. 1977; R.C.M. 1947, 43-710; amd. Sec. 3, Ch. 596, L. 1979.

5-11-106. Authority to investigate and examine. The legislative council, on behalf of standing and select committees and subcommittees, shall have authority to investigate and examine the costs of state governmental activities and may examine and inspect all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: En. Sec. 4, Ch. 34, L. 1957; amd. Sec. 4, Ch. 431, L. 1973; R.C.M. 1947, 43-712.

5-11-107. Powers relating to hearings. (1) In the discharge of its duties on behalf of standing committees and subcommittees, the legislative council may hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, and cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in district court.

(2) If a person disobeys a subpoena issued by the council on behalf of a standing committee or subcommittee or if a witness refuses to testify on any matters regarding which he may be lawfully interrogated, the district court

of any county or a judge thereof shall, on application of the legislative council, compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

History: En. Sec. 5, Ch. 34, L. 1957; amd. Sec. 5, Ch. 431, L. 1973; amd. Sec. 14, Ch. 309, L. 1977; R.C.M. 1947, 43-713.

5-11-108 through 5-11-110 reserved.

5-11-111. Executive director, personnel, and consultants. The legislative council may employ an executive director and such other personnel, not members of the council, as it considers necessary to assist in the preparation of proposed legislative acts and standing and select committee and subcommittee reports and recommendations and to carry out other council activities. The council shall fix the compensation of such employees. It may also employ the services of any research agency which it considers necessary in the discharge of its duties.

History: En. Sec. 3, Ch. 34, L. 1957; amd. Sec. 3, Ch. 431, L. 1973; amd. Sec. 1, Ch. 30, L. 1974; effective date amd. Sec. 1, Ch. 12, L. 1975; amd. Sec. 12, Ch. 309, L. 1977; R.C.M. 1947, 43-711(1).

5-11-112. Functional divisions. The legislative council may establish functional divisions within the council staff in order to carry out all of the responsibilities delegated to the council by law or legislative rule. The divisions shall include the following:

(1) legislative services division:
(a) engrossing and enrolling;
(b) mailroom;
(c) printing;
(2) research and reference services division:
(a) general and specialized legislative research;
(b) legislative reference and information, including preparation and publication of the Legislative Review to be sold at the cost of the publication plus postage;
(c) committee staffing when the legislature is not in session;
(3) legal services division:
(a) bill drafting;
(b) legal counseling;
(4) management and business services division, which shall:
(a) maintain bookkeeping records;
(b) sign claims and payrolls;
(c) order all printing, supplies, and equipment; and
(d) serve the house and senate during the session.

History: En. Sec. 3, Ch. 34, L. 1957; amd. Sec. 3, Ch. 431, L. 1973; amd. Sec. 1, Ch. 30, L. 1974; effective date amd. Sec. 1, Ch. 12, L. 1975; amd. Sec. 12, Ch. 309, L. 1977; R.C.M. 1947, 43-711(2).

Part 2

Dissemination of Laws and Proceedings

5-11-201. Journals — how authenticated. The journal of the senate must be authenticated by the signature of the president and the journal of the house of representatives by the signature of the speaker.

History: En. Sec. 203, Pol. C. 1895; re-en. Sec. 70, Rev. C. 1907; re-en. Sec. 68, R.C.M. 1921; Cal. Pol. C. Sec. 256; re-en. Sec. 68, R.C.M. 1935; R.C.M. 1947, 43-304.

5-11-202. Printing of the house and senate journals and session laws. The legislative council shall deliver to the printer entitled to them, at the earliest practicable day after the final adjournment of each session of the legislature, copies of all laws, resolutions, and journals passed, adopted, or kept at the session, with proper indexes to the same.

History: En. 43-711.1 by Sec. 3, Ch. 96, L. 1973; R.C.M. 1947, 43-711.1; amd. Sec. 2, Ch. 138, L. 1979.

5-11-203. Distribution of senate and house journals and session laws. (1) Immediately after the senate and house journals and the session laws are bound, the legislative council shall distribute them.

(2) The council shall distribute the house and senate journals as follows:

(a) to each county clerk, one copy of each for the use of the county;

(b) to the Montana state library, 20 copies of each for the use of the library and distribution to depository libraries, of which 2 copies will be deposited with the state historical library for security purposes;

(c) to the state law librarian, two copies of each for the use of the library and such additional copies as may be necessary for the purposes of exchange;

(d) to the library of congress and each public officer as defined in 2-2-102, two copies of each; and

(e) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the journals were adopted, one copy of each.

(3) The council shall distribute the session laws as follows:

(a) to each department of the executive branch of the United States; agency, commission, conference, or corporation established by the United States government; or any other subdivision thereof upon request and approval by the legislative council, one copy;

(b) to the library of congress, eight copies;

(c) to the state library, two copies;

(d) to the state historical library, two copies;

(e) to the state law librarian, four copies for the use of the library and such additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;

(f) to the library of each custodial institution, one copy;

(g) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102(8), one copy;

(h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the laws were adopted, one copy;

(i) to each of the community college districts of the state, as defined in 20-15-101, and each unit of the Montana university system, one copy;

(j) to each county clerk, three copies for the use of the county; and

(k) to each county attorney and to each clerk of a district court, one copy.

History: En. Sec. 1, Ch. 86, L. 1907; re-en. Sec. 155, Rev. C. 1907; amd. Sec. 1, Ch. 126, L. 1921; re-en. Sec. 135, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1929; re-en. Sec. 135, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1937; Sec. 82-2203, R.C.M. 1947; redes. 43-711.2 and amd. by Sec. 4, Ch. 96, L. 1973;

amd. Sec. 13, Ch. 309, L. 1977; R.C.M. 1947, 43-711.2; amd. Sec. 1, Ch. 65, L. 1979; amd. Sec. 3, Ch. 138, L. 1979; amd. Sec. 18, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "public officer as defined in 2-2-102" for "state officer" in (2)(d); substituted the language in (3)(a) for "to each department of the government at Washington and of the government of this state, one copy"; inserted "as defined in 2-2-102(8)" in (3)(g); substituted "community college districts of the state, as defined in 20-15-101" for "incorporated colleges of the state" in (3)(i); made minor changes in grammar.

5-11-204. Secretary of state to assign chapter numbers to new laws. It shall be the duty of the secretary of state, when bills passed by any legislature of Montana are filed in his office as directed in 5-4-302 and 5-4-305, to note thereon the date of filing and to number such bills, except resolutions and bills appropriating money, in the order of their reception by him, chapter 1 and upwards, using Arabic numerals.

History: En. Sec. 1, Ch. 17, L. 1903; re-en. Sec. 162, Rev. C. 1907; re-en. Sec. 141, R.C.M. 1921; re-en. Sec. 141, L. 1935; R.C.M. 1947, 82-2209; amd. Sec. 4, Ch. 138, L. 1979.

5-11-205. Publication of laws — format. (1) The legislative council shall publish all laws and resolutions passed or adopted by each session of the legislature in a publication to be known as the "Laws of Montana".

(2) Laws of each session other than appropriations must be printed in the Laws of Montana in the order that they have been filed in the office of the secretary of state with the chapter number assigned by the secretary of state as the heading. The chapter number must also appear as part of each page heading. In all laws containing amendments to an existing law, the new parts designated in the act by underlining must be printed in italics in the Laws of Montana. The senate or house bill number may be omitted from each act.

(3) Reference to the laws of a legislative session may be made as follows: "Chapter .... (giving number), Laws of .... (giving the year enacted)".

(4) Appropriations passed by each session of the legislature must be printed in a separate section of the Laws of Montana with the house bill number as a heading.

(5) Resolutions adopted by each session of the legislature must be printed in a separate section of the Laws of Montana with the type of resolution and its number as a heading.

(6) The legislative council shall also publish in the Laws of Montana the indexes required by 5-11-206.

History: En. Sec. 2, Ch. 17, L. 1903; re-en. Sec. 163, Rev. C. 1907; re-en. Sec. 142, R.C.M. 1921; re-en. Sec. 142, L. 1935; amd. Sec. 1, Ch. 10, L. 1939; Sec. 82-2210, R.C.M. 1947; amd. Sec. 1, Ch. 59, L. 1973; redes. 43-711.3 and amd. by Sec. 5, Ch. 96, L. 1973; R.C.M. 1947, 43-711.3; amd. Sec. 5, Ch. 138, L. 1979.

5-11-206. Index. (1) The legislative council shall prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislature. The index shall be a thorough index of the laws and resolutions and of each subject contained in or covered by the laws and resolutions, together with a cross-index to assist in readily finding any subject contained in each volume.

(2) For the purpose of uniformity in indexes, the index of each succeeding publication of the session laws shall conform as nearly as practicable with those of the volumes preceding it.

(3) There shall also be prepared for each publication of the session laws a "code index" showing what sections of the Montana Code Annotated have been amended or repealed by any laws enacted by that session of the legislature.

History: **En. Sec. 11, Ch. 153, L. 1949; amd. Sec. 1, Ch. 128, L. 1973; R.C.M. 1947, 44-411; amd. Sec. 6, Ch. 138, L. 1979.**

5-11-207. Description of county boundaries included in session laws. The legislative council shall include in the published session laws a description of the county boundaries of any new counties of the state created by petition and election, commencing with counties created after January 1, 1921, by inserting in each set of session laws new counties that have been created since the publication of the laws of the previous session.

History: **En. Sec. 1, Ch. 67, L. 1921; re-en. Sec. 143, R.C.M. 1921; re-en. Sec. 143, R.C.M. 1935; Sec. 82-2211, R.C.M. 1947; redes. 43-711.4 and amd. by Sec. 6, Ch. 96, L. 1973; R.C.M. 1947, 43-711.4; amd. Sec. 7, Ch. 138, L. 1979.**

5-11-208. Expenses. The expenses incurred by the legislative council in carrying into effect 5-11-202 through 5-11-207, as amended, must be paid out of money specifically appropriated for that purpose.

History: **En. Sec. 409, Pol. C. 1895; re-en. Sec. 164, Rev. C. 1907; re-en. Sec. 144, R.C.M. 1921; re-en. Sec. 144, R.C.M. 1935; amd. Sec. 30, Ch. 97, L. 1961; Sec. 82-2212, R.C.M. 1947; redes. 43-711.5 and amd. by Sec. 7, Ch. 96, L. 1973; R.C.M. 1947, 43-711.5; amd. Sec. 8, Ch. 138, L. 1979.**

5-11-209. Codes — availability to legislators — reserved for use by legislative committees. (1) Immediately after the Montana Code Annotated statute text and histories are bound following each legislative session, the legislative council shall make available one set of these volumes to each member of the legislature at a charge of $10.

(2) The legislative council shall reserve 50 sets of the Montana Code Annotated statute text and histories for the use of legislative committees appointed under 5-2-201.

(3) Costs associated with providing code sets as required by this section shall be paid out of the revolving fund account established under 1-11-301.

History: **En. Sec. 1, Ch. 382, L. 1981.**

Compiler's Comments

Codification Instruction: Section 2, Ch. 382, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 5, chapter 11, part 2, and the provisions of Title 5, chapter 11, part 2, apply to section 1."

5-11-210 reserved.

5-11-211. Definitions. For the purposes of this part, the following definitions apply:

(1) "Person" means any person, firm, corporation, or association.

(2) "Proceedings of the legislature" means status sheets, daily journals, reproduced bills, reproduced resolutions, printed bills, printed resolutions, and amendments thereto.

(3) "One complete set" means one copy of each item of the proceedings of a session, regular or special, of the legislature.

(4) "Session Laws" for a particular year means the laws and resolutions passed or adopted by that year's session of the legislature.

History: **En. Sec. 1, Ch. 223, L. 1959; amd. Sec. 1, Ch. 12, L. 1973; amd. Sec. 1, Ch. 292, L. 1974; R.C.M. 1947, 43-901; amd. Sec. 9, Ch. 138, L. 1979.**

5-11-212. Fees for proceedings. (1) A complete set of the proceedings of a regular session of the legislature may be purchased from the secretary of state for the amount prescribed in the joint legislative rules. Upon receipt of payment, the secretary of state shall transmit the name of the purchaser to the executive director of the legislative council, who shall supply the purchaser with a complete set of the proceedings.

(2) A purchaser who requests that a set of the proceedings be mailed shall pay an additional fee as prescribed in the joint legislative rules to the secretary of state for each complete set that is mailed.

(3) Single copies of bills, resolutions, or amendments thereto may be purchased from the legislative council for a price varying with the length of the document as prescribed in the joint rules.

(4) Single copies of status sheets or status of proceedings may be purchased from the legislative council for a price per copy as prescribed in the joint rules. A person may subscribe to receive daily copies of the status sheets or status of proceedings by mail for a fee set by the legislative council to cover the costs of the service.

(5) The executive director of the legislative council and the secretary of state shall account for all funds collected by their respective offices under this section and shall transmit the funds to the treasurer of the state of Montana, who shall credit them to the general fund.

History: En. Sec. 2, Ch. 223, L. 1959; amd. Sec. 1, Ch. 14, L. 1967; amd. Sec. 1, Ch. 5, L. 1969; amd. Sec. 2, Ch. 292, L. 1974; amd. Sec. 22, Ch. 309, L. 1977; R.C.M. 1947, 43-902; amd. Sec. 10, Ch. 138, L. 1979.

5-11-213. Exclusions. Representatives of general circulation newspapers, radio, and television who shall have first registered with the secretary of state shall be exempt from 5-11-212 and shall receive one complete set of the proceedings of the legislature without charge.

History: En. Sec. 3, Ch. 223, L. 1959; amd. Sec. 3, Ch. 292, L. 1974; R.C.M. 1947, 43-903.

5-11-214. Exemptions from fees. All elected state officials, state department heads, the state law library, and county clerk and recorders shall be exempted from 5-11-212.

History: En. Sec. 4, Ch. 223, L. 1959; amd. Sec. 4, Ch. 292, L. 1974; R.C.M. 1947, 43-904.

Part 3

Interstate Cooperation

5-11-301. Functions of legislative council — interstate cooperation. It shall be a function of the legislative council to:

(1) carry forward the participation of the state of Montana as a member of the council of state governments, and the legislative council is hereby designated as the Montana commission on interstate cooperation;

(2) encourage and assist the government of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise with the other states, with the federal government, and with local units of government;

(3) establish such delegations and committees as may be deemed advisable to confer with similar delegations and committees from other states concerning problems of mutual interest. The membership of such delegations

and committees may consist of legislators and employees of the state other than members of the legislative council. Members of such delegations and committees shall serve without pay, but they may be reimbursed for expenses as provided by law.

(4) endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for interstate compacts and reciprocal or uniform legislation and by facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchange and clearance of research and information, and any other suitable process.

History: **En. Sec. 2, Ch. 72, L. 1959; R.C.M. 1947, 82-2112.**

5-11-302. Council of state governments. In order to facilitate such cooperation, the council of state governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it.

History: **En. Sec. 3, Ch. 72, L. 1959; R.C.M. 1947, 82-2113.**

CHAPTER 12

LEGISLATIVE FINANCE ACT

Part 1 — General

Section

5-12-101. Title and purpose of chapter.
5-12-102. Definitions.

Part 2 — Legislative Finance Committee

5-12-201. Legislative finance committee.
5-12-202. Appointment of members.
5-12-203. Term — officers — compensation.
5-12-204. Vacancies.
5-12-205. Powers and duties of committee.

Part 3 — Legislative Fiscal Analyst

5-12-301. Office of legislative fiscal analyst.
5-12-302. Fiscal analyst's duties.
5-12-303. Fiscal analysis information from state agencies.
5-12-304. Employees and consultants.

Part 4 — Budget Admendments

5-12-401. Submission of budget amendments to committee.
5-12-402. Review by legislative fiscal analyst.

Part 1

General

5-12-101. Title and purpose of chapter. (1) This chapter may be cited as "The Legislative Finance Act".

(2) Because the legislature is responsible for appropriating public funds, it must provide for fiscal analysis of state government to accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance.

History: En. 43-1109 by Sec. 1, Ch. 448, L. 1975; R.C.M. 1947, 43-1109.

5-12-102. Definitions. In this chapter, the following definitions apply:

(1) "Budget amendment" means a request submitted through the budget director to the committee for executive branch agencies to expend funds in excess of those appropriated by the legislature.

(2) "Budget director" means the budget director appointed pursuant to 17-7-103.

(3) "Committee" means the legislative finance committee created by this chapter.

(4) "State agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislature, that handles money on behalf of the state, or that holds any trust or agency moneys from any source.

History: (1)En. 43-1117 by Sec. 1, Ch. 510, L. 1975; Sec. 43-1117, R.C.M. 1947; (2) thru (4)En. 43-1110 by Sec. 2, Ch. 448, L. 1975; Sec. 43-1110, R.C.M. 1947; R.C.M. 1947, 43-1110, 43-1117.

Part 2

Legislative Finance Committee

5-12-201. Legislative finance committee. There is a legislative finance committee which is a permanent joint committee of the legislature.

History: En. 43-1111 by Sec. 3, Ch. 448, L. 1975; amd. Sec. 23, Ch. 309, L. 1977; R.C.M. 1947, 43-1111(part).

5-12-202. Appointment of members. (1) The legislative finance committee consists of:

(a) four members of the senate finance and claims committee appointed by the chairman;

(b) two members of the senate appointed at large by the committee on committees;

(c) four members of the house of representatives appropriations committee appointed by the chairman; and

(d) two members of the house appointed at large by the speaker.

(2) These members shall be appointed before the end of each legislative session. No more than three members of each house, two committee members and one at-large member, may be from the same political party.

History: En. 43-1112 by Sec. 4, Ch. 448, L. 1975; amd. Sec. 5, Ch. 103, L. 1977; R.C.M. 1947, 43-1112(1), (2).

5-12-203. Term — officers — compensation. (1) Appointments are for 2 years, and a member of the committee shall serve until his term of office as a legislator ends or until his successor is appointed, whichever occurs first.

(2) The committee shall elect one of its members as chairman and such other officers as it considers necessary.

(3) Members of the committee are entitled to receive compensation and expenses as provided in 5-2-302.

History: En. 43-1112 by Sec. 4, Ch. 448, L. 1975; amd. Sec. 5, Ch. 103, L. 1977; R.C.M. 1947, 43-1112(4), (5), (6).

5-12-204. Vacancies. If a vacancy occurs on the committee when the legislature is not in session, the remaining members shall select a member of the appropriate political party and appropriate committee, as provided in 5-12-202, to complete the unexpired term.

History: En. 43-1112 by Sec. 4, Ch. 448, L. 1975; amd. Sec. 5, Ch. 103, L. 1977; R.C.M. 1947, 43-1112(3).

5-12-205. Powers and duties of committee. The committee may:

(1) organize, adopt rules to govern its proceedings, and meet as often as necessary, upon the call of the chairman, to advise and consult with the legislative fiscal analyst;

(2) employ and set the salary of the legislative fiscal analyst, who shall serve at the pleasure of and be responsible to the committee; and

(3) exercise the investigatory powers of a standing committee under chapter 5, part 1, of this title.

History: En. 43-1113 by Sec. 5, Ch. 448, L. 1975; R.C.M. 1947, 43-1113.

Part 3

Legislative Fiscal Analyst

5-12-301. Office of legislative fiscal analyst. There is an office of legislative fiscal analyst. The legislative fiscal analyst shall carry out the provisions of this chapter.

History: En. 43-1111 by Sec. 3, Ch. 448, L. 1975; amd. Sec. 23, Ch. 309, L. 1977; R.C.M. 1947, 43-1111(part).

5-12-302. Fiscal analyst's duties. The legislative fiscal analyst shall:

(1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) estimate revenue from existing and proposed taxes;

(3) analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

(4) make the reports and recommendations he deems desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature; and

(5) assist committees of the legislature and individual legislators in compiling and analyzing financial information.

History: En. 43-1114 by Sec. 6, Ch. 448, L. 1975; R.C.M. 1947, 43-1114.

5-12-303. Fiscal analysis information from state agencies. (1) The legislative fiscal analyst has the authority to investigate and examine the costs of state government activities and may examine the records, books, and files of any state agency, including confidential records of executive branch agencies.

(2) Every state agency shall furnish the legislative fiscal analyst with copies of all budget requests, at the time of submission to the budget director as provided by law, and if requested, all underlying and supporting documentation.

(3) In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst on a confidential basis:

(a) by December 1, a copy of the documents which reflect the anticipated receipts and other means of financing the budget for each fiscal year of the ensuing biennium;

(b) by December 1, a preliminary budget which shall meet the statutory requirements for submission of the budget to the legislature; and

(c) by December 15, all amendments to the preliminary budget.

History: En. 43-1115 by Sec. 7, Ch. 448, L. 1975; R.C.M. 1947, 43-1115.

5-12-304. Employees and consultants. The legislative fiscal analyst may employ, fix the salaries, and define the duties of such staff and consultants as may be necessary, within the limits of his appropriation.

History: En. 43-1116 by Sec. 8, Ch. 448, L. 1975; R.C.M. 1947, 43-1116.

Part 4

Budget Amendments

5-12-401. Submission of budget amendments to committee. All budget amendments for state agencies must be submitted through the budget director to the committee. No state agency shall expend in excess of the appropriation except under authority of a budget amendment.

History: En. 43-1118 by Sec. 2, Ch. 510, L. 1975; amd. Sec. 24, Ch. 309, L. 1977; R.C.M. 1947, 43-1118.

Compiler's Comments

1981 Appropriations Act — Budget Amendments: Sections 2 through 4, HB 500 (1981) provided a procedure for approval of budget amendments.

1981 Appropriations Act — Expenditure Limit: Section 7, HB 500 (1981) provided: "Expenditures may not exceed appropriations."

5-12-402. Review by legislative fiscal analyst. The legislative fiscal analyst shall review proposed budget amendments submitted to the committee from the budget director and make recommendations to the committee concerning proposed budget amendments.

History: En. 43-1119 by Sec. 3, Ch. 510, L. 1975; R.C.M. 1947, 43-1119.

CHAPTER 13

LEGISLATIVE AUDIT ACT

Part 1 — General

Section
5-13-101. Title and purpose of chapter.
5-13-102. Definitions.

Part 2 — Legislative Audit Committee

5-13-201. Legislative audit committee.
5-13-202. Appointment and term of members — officers — vacancies.
5-13-203. Meetings — compensation.

Part 3 — Legislative Auditor

5-13-301. Office of legislative auditor.
5-13-302. Appointment and qualifications.
5-13-303. Term and removal.
5-13-304. Powers and duties.
5-13-305. Employees, consultants, and legal counsel.
5-13-306. Legislative auditor to assist legislature during sessions.
5-13-307. Recommendations of legislative auditor — implementation costs.
5-13-308. Audit standards and objectives.
5-13-309. Information from state agencies.
5-13-310. Prosecution — discipline of professionals.

Part 4 — Audit Costs and Contracts

5-13-401. Definitions.
5-13-402. Audit costs.
5-13-403. Audit revolving account — appropriation and expenditures.
Sections 5-13-404 through 5-13-410 reserved.
5-13-411. Legislative auditor to approve contracts for audit services.

Chapter Compiler's Comments

1981 Appropriations — Access to Records: Section 10, HB 500 (1981) provided: "No funds appropriated by this act may be expended for any contract, written or oral, for services with a nonstate entity for services to be provided by the nonstate entity to members of the public on behalf of the state unless such contract contains a provision allowing access to those records of the nonstate entity as may be necessary for legislative audit and analysis purposes in determining compliance with the terms of the contract. Each such contract may be unilaterally terminated by the state, and each contract shall so provide upon refusal of the nonstate entity to allow access to records necessary to carry out the legislative audit and analysis functions set out in Title 5, chapters 12 and 13."

Part 1

General

5-13-101. Title and purpose of chapter. (1) This chapter may be cited as "The Legislative Audit Act".

(2) Because the legislature is responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, and shaping the administration to perform the work of state government and is held finally accountable for fiscal policy, the legislature should also be responsible for the audit of fiscal accounts and records so that it may be assured that its directives have been faithfully carried out. It is the intent of this chapter that each agency of state government be audited for the purpose of furnishing the legislature with factual information vital to the discharge of its legislative duties.

History: En. Sec. 1, Ch. 249, L. 1967; R.C.M. 1947, 79-2301.

5-13-102. Definitions. In this chapter:

(1) "state agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by

virtue of an appropriation from the legislature or that handles money on behalf of the state or that holds any trust or agency moneys from any source;

(2) "committee" means the legislative audit committee.

History: En. Sec. 2, Ch. 249, L. 1967; R.C.M. 1947, 79-2302.

Part 2

Legislative Audit Committee

5-13-201. Legislative audit committee. There is a legislative audit committee which is a permanent joint committee of the legislature.

History: En. 79-2303.1 by Sec. 1, Ch. 367, L. 1974; amd. Sec. 25, Ch. 309, L. 1977; R.C.M. 1947, 79-2303.1(1).

5-13-202. Appointment and term of members — officers — vacancies. (1) The legislative audit committee consists of four members of the senate and four members of the house of representatives appointed before the 60th legislative day of each regular session in the same manner as standing committees of the respective houses are appointed. No more than two of the appointees of each house may be members of the same political party.

(2) A member of the committee shall serve until his term of office as a legislator ends or until his successor is appointed, whichever occurs first.

(3) The committee shall elect one of its members as chairman and such other officers as it considers necessary.

(4) A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee.

History: En. Sec. 3, Ch. 249, L. 1967; Sec. 79-2303, R.C.M. 1947; amd. and redes. 79-2304 by Sec. 2, Ch. 367, L. 1974; amd. Sec. 26, Ch. 309, L. 1977; R.C.M. 1947, 79-2304.

5-13-203. Meetings — compensation. (1) The committee shall meet as often as may be necessary during and between legislative sessions to advise and consult with the legislative auditor.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: En. Sec. 4, Ch. 249, L. 1967; Sec. 79-2304, R.C.M. 1947; amd. and redes. 79-2305 by Sec. 3, Ch. 367, L. 1974; amd. Sec. 8, Ch. 103, L. 1977; R.C.M. 1947, 79-2305.

Part 3

Legislative Auditor

5-13-301. Office of legislative auditor. There is an office of the legislative auditor. The legislative auditor is responsible for performing the duties imposed by this chapter.

History: En. 79-2303.1 by Sec. 1, Ch. 367, L. 1974; amd. Sec. 25, Ch. 309, L. 1977; R.C.M. 1947, 79-2303.1(2).

5-13-302. Appointment and qualifications. (1) The committee shall appoint the legislative auditor and set his salary.

(2) The legislative auditor shall hold a degree from an accredited college or university with a major in accounting or an allied field and shall have at least 2 years' experience in the field of governmental accounting and auditing.

History: En. Sec. 5, Ch. 249, L. 1967; Sec. 79-2305, R.C.M. 1947; redes. 79-2307 by Sec. 8, Ch. 367, L. 1974; R.C.M. 1947, 79-2307.

5-13-303. Term and removal. The legislative auditor is responsible solely to the legislature. He shall hold office for a term of 2 years beginning with July 1 of each odd-numbered year. The committee may remove him for misfeasance, malfeasance, or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 7, Ch. 249, L. 1967; Sec. 79-2307, R.C.M. 1947; redes. 79-2309 by Sec. 8, Ch. 367, L. 1974; R.C.M. 1947, 79-2309.

5-13-304. Powers and duties. The legislative auditor shall:

(1) audit the financial affairs and transactions of every state agency;

(2) make a complete written report of each audit. A copy of each report shall be furnished to the department of administration, the state agency which was audited, each member of the committee, and the legislative council.

(3) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information in his possession relative to the violation;

(4) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(5) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(6) report to the legislature during the first week of each regular session. The report shall contain, among other things, copies of or summaries of audit reports on state agencies and any recommendations relating to such reports.

(7) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency must obtain the written consent of the grantee to the audit provided for in this subsection.

History: En. Sec. 8, Ch. 249, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-2308, R.C.M. 1947; amd. and redes. 79-2310 by Sec. 5, Ch. 367, L. 1974; amd. Sec. 27, Ch. 309, L. 1977; R.C.M. 1947, 79-2310.

5-13-305. Employees, consultants, and legal counsel. The legislative auditor may appoint whatever employees and consultants are necessary to carry out the provisions of this chapter, within the limitations of legislative appropriations. The legislative auditor may employ legal counsel to conduct proceedings under this chapter.

History: En. Sec. 6, Ch. 249, L. 1967; Sec. 79-2306, R.C.M. 1947; amd. and redes. 79-2308 by Sec. 4, Ch. 367, L. 1974; R.C.M. 1947, 79-2308.

5-13-306. Legislative auditor to assist legislature during sessions. During sessions of the legislature, the legislative auditor and his staff, when requested, shall assist the legislature, its committees, and its members by gathering and analyzing information relating to the fiscal affairs of state government.

History: En. Sec. 11, Ch. 249, L. 1967; Sec. 79-2311, R.C.M. 1947; redes. 79-2311.1 by Legislative Council, 1974; R.C.M. 1947, 79-2311.1.

5-13-307. Recommendations of legislative auditor — implementation costs. (1) The reports of the legislative auditor may include comments, recommendations, and suggestions, but he shall have no power to enforce them nor shall he otherwise influence or direct executive or legislative action.

(2) Whenever significant costs are associated with the implementation of audit recommendations, the legislative auditor shall, if practicable, note this fact and the estimated amount of such costs in the appropriate audit report.

History: (1)En. Sec. 10, Ch. 249, L. 1967; Sec. 79-2310, R.C.M. 1947; amd. and redes. 79-2312 by Sec. 6, Ch. 367, L. 1974; R.C.M. 1947, 79-2312; (2)En. Sec. 5, Ch. 24, L. 1981.

5-13-308. Audit standards and objectives. The objectives of audits of state agencies conducted by the legislative auditor are to determine whether:

(1) the agency is carrying out only those activities or programs authorized by the legislature and is conducting them efficiently and effectively;

(2) expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations;

(3) the agency collects and accounts properly for all revenues and receipts arising from its activities;

(4) the assets of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner;

(5) reports and financial statements by the agency to the governor, the legislature, and central control agencies disclose fully the nature and scope of the activities conducted and provide a proper basis for evaluating the agency's operations.

History: En. Sec. 9, Ch. 249, L. 1967; Sec. 79-2309, R.C.M. 1947; redes. 79-2311 by Sec. 8, Ch. 367, L. 1974; R.C.M. 1947, 79-2311.

5-13-309. Information from state agencies. (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, and records.

(2) The legislative auditor may examine at any time the books, accounts, and records, confidential or otherwise, of a state agency. This shall not be construed as authorizing the publication of information which the law prohibits publishing.

(3) The head of each state agency shall immediately notify both the attorney general and the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state moneys or property under his control or for which he is responsible.

History: En. Sec. 12, Ch. 249, L. 1967; amd. Sec. 1, Ch. 270, L. 1971; Sec. 79-2312, R.C.M. 1947; amd. and redes. 79-2314 by Sec. 7, Ch. 367, L. 1974; amd. Sec. 62, Ch. 359, L. 1977; R.C.M. 1947, 79-2314; amd. Sec. 1, Ch. 232, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "both the attorney general and" after "shall immediately notify" in (3).

5-13-310. Prosecution — discipline of professionals. (1) The attorney general shall conduct on behalf of the state all prosecutions for public offenses disclosed by an audit of a state agency performed by the legislative auditor.

(2) If the attorney general shall decline such prosecution or shall fail to commence action on a public offense within a reasonable time, the county attorney of the appropriate county shall conduct on behalf of the state such prosecution.

(3) In any action taken by the attorney general or any county attorney under this section, wherein any professional person in the state of Montana is charged or may have engaged in unethical conduct, all records or certified copies of such records, including investigative materials, shall be turned over to the appropriate disciplinary authority of his or her profession immediately upon completion of the action.

History: En. Sec. 1, Ch. 4, L. 1974; amd. Sec. 1, Ch. 458, L. 1975; R.C.M. 1947, 79-2315.

Part 4

Audit Costs and Contracts

5-13-401. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university system unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "Audit services" means financial compliance post audits as required by this chapter.

(3) "University system unit" means the board of regents or its units.

History: En. Sec. 1, Ch. 24, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 24, L. 1981 (HB 519), read: "An act to provide for audit costs in the executive budget recommendations to the legislature; requiring transfer of funds for audits to the legislative auditor; requiring that contracts for audit services be approved by the legislative auditor; creating an audit account in the revolving fund and providing for deposit and expenditure of money therein; and providing for notation of audit recommendation implementation costs."

5-13-402. Audit costs. (1) Prior to July 1 of each even-numbered year, the legislative auditor shall advise each agency and the budget director of the estimated audit costs for the following biennium. Each agency shall include the estimated audit costs in its proposed budget submitted to the budget director pursuant to 17-7-112. The budget director shall notify the legislative auditor if the executive budget recommendation to the legislature for audit costs differs from that proposed by the legislative auditor.

(2) Not later than 60 days after adjournment of each legislature, the budget director shall provide to the legislative auditor a schedule reflecting, by fund, amounts appropriated to each agency for audit costs.

(3) The legislative auditor shall bill agencies for audit services as he considers necessary. In no event may the legislative auditor bill an agency for

audit services in excess of amounts appropriated for audit services. Additional audit related services may be provided by the legislative auditor at a cost agreed to by an agency and billed to the agency.

History: **En. Sec. 2, Ch. 24, L. 1981.**

5-13-403. Audit revolving account — appropriation and expenditures. All money for audits transferred to the legislative auditor as provided in 5-13-402 must be deposited in the revolving fund in the state treasury to the credit of the office of the legislative auditor. The money so deposited is hereby appropriated and may be expended by the legislative auditor to pay expenses incurred in auditing state agencies pursuant to an operational plan approved by the legislative audit committee.

History: **En. Sec. 4, Ch. 24, L. 1981.**

5-13-404 through 5-13-410 reserved.

5-13-411. Legislative auditor to approve contracts for audit services. No contract for an audit of a state agency may be entered into without the approval of the legislative auditor.

History: **En. Sec. 3, Ch. 24, L. 1981.**

CHAPTER 14

ADMINISTRATIVE CODE COMMITTEE

Part 1 — Composition, Terms, and Officers

Section
5-14-101. Appointment and composition.
5-14-102. Term of office.
5-14-103. Vacancies.
5-14-104. Officers.

Part 1

Composition, Terms, and Officers

5-14-101. Appointment and composition. The administrative code committee consists of four members of the senate and four members of the house of representatives appointed before the 60th legislative day of the regular session in the same manner as standing committees of the respective houses are appointed. No more than two of the appointees of each house may be members of the same political party.

History: **En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part).**

5-14-102. Term of office. A member of the committee shall serve until his term of office as a legislator ends or until the end of the 60th legislative day of the session of the biennium following his appointment or until his successor is appointed, whichever occurs first.

History: **En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part).**

5-14-103. Vacancies. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee.

History: En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part).

5-14-104. Officers. The committee shall elect one of its members as chairman and such other officers as it considers necessary.

History: En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.2(part).

CHAPTER 15

LEGISLATIVE CONSUMER COMMITTEE CONSUMER COUNSEL

Part 1 — Legislative Consumer Committee

Section

5-15-101. Legislative consumer committee — appointment and composition.
5-15-102. Ineligibility for appointment.
5-15-103. Term of office.
5-15-104. Vacancies.
5-15-105. Officers.

Part 2 — Consumer Counsel

5-15-201. Consumer counsel — appointment and qualifications.

Part 1

Legislative Consumer Committee

5-15-101. Legislative consumer committee — appointment and composition. (1) There is a legislative consumer committee consisting of two members of the senate and two members of the house of representatives.

(2) Members shall be appointed in the same manner as standing committees of the respective houses before the 60th legislative day of the legislative session following the expiration of the terms of the members of the committee. No more than one of the appointees of each house may be members of the same political party.

History: En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(part).

5-15-102. Ineligibility for appointment. Any person who is an employee, agent, officer, partner, or director of any regulated company or who has served a regulated company in any capacity within the 3 years previous to his appointment may not be a member of the committee.

History: En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(3).

5-15-103. Term of office. A member shall serve until his term of office as a legislator ends and until his successor is appointed.

History: En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(6).

5-15-104. Vacancies. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a legislator by the remaining members of the committee.

History: **En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(4).**

5-15-105. Officers. The committee shall elect one of its members as chairman and such other officers as it determines necessary.

History: **En. Sec. 3, Ch. 65, L. 1973; R.C.M. 1947, 70-703(7).**

Part 2

Consumer Counsel

5-15-201. Consumer counsel — appointment and qualifications. The committee shall appoint a consumer counsel and set his salary. The consumer counsel shall have the following minimum qualifications and such additional qualifications as the committee determines appropriate:

(1) a bachelor's degree or equivalent from an accredited college or university with a major or minor in accounting or allied fields;

(2) be admitted to practice law in Montana courts and in the United States district court for the state of Montana.

History: **En. Sec. 5, Ch. 65, L. 1973; R.C.M. 1947, 70-705.**

CHAPTER 16

ENVIRONMENTAL QUALITY COUNCIL

Part 1 — Composition, Terms, and Officers

Section
5-16-101. Appointment and composition.
5-16-102. Qualifications.
5-16-103. Term of office.
5-16-104. Vacancies.
5-16-105. Officers.

Part 1

Composition, Terms, and Officers

5-16-101. Appointment and composition. The environmental quality council shall consist of 13 members to be as follows:

(1) the governor or his designated representative shall be an ex officio member of the council and shall participate in council meetings as a nonvoting member;

(2) four members of the senate and four members of the house of representatives appointed before the 50th legislative day in the same manner as standing committees of the respective houses are appointed. No more than two of the appointees of each house shall be members of the same political party.

(3) four members of the general public. Two public members shall be appointed by the speaker of the house with the consent of the house minority leader, and two shall be appointed by the president of the senate with the consent of the senate minority leader.

History: En. Sec. 8, Ch. 238, L. 1971; amd. Sec. 1, Ch. 492, L. 1975; amd. Sec. 1, Ch. 204, L. 1977; R.C.M. 1947, 69-6508(part).

5-16-102. Qualifications. In considering the appointments under subsections (2) and (3) of 5-16-101, consideration shall be given to their qualifications to:

(1) analyze and interpret environmental trends and information of all kinds;

(2) appraise programs and activities of the state government in the light of the policy set forth in 75-1-103;

(3) be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and

(4) formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 8, Ch. 238, L. 1971; amd. Sec. 1, Ch. 492, L. 1975; amd. Sec. 1, Ch. 204, L. 1977; R.C.M. 1947, 69-6508(part).

5-16-103. Term of office. The terms of office of all council members shall be 2 years and shall terminate upon appointment of a new council before the 50th legislative day. Council members may be reappointed. However, in no case shall a member serve more than 6 years.

History: En. Sec. 9, Ch. 238, L. 1971; amd. Sec. 2, Ch. 492, L. 1975; R.C.M. 1947, 69-6509(1).

5-16-104. Vacancies. A vacancy on the council of a member appointed under 5-16-101(2) occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the same method as the original appointment.

History: En. Sec. 8, Ch. 238, L. 1971; amd. Sec. 1, Ch. 492, L. 1975; amd. Sec. 1, Ch. 204, L. 1977; R.C.M. 1947, 69-6508(part).

5-16-105. Officers. The council shall elect one of its members as chairman and such other officers as it deems necessary. Such officer shall be elected for a term of 2 years.

History: En. Sec. 9, Ch. 238, L. 1971; amd. Sec. 2, Ch. 492, L. 1975; R.C.M. 1947, 69-6509(2).

CHAPTER 17

CAPITOL BUILDING AND PLANNING COMMITTEE

Part 1 — Composition, Terms, and Officers

Section
5-17-101. Capitol building and planning committee — appointment, composition, and meetings.
5-17-102. Function of committee — capitol area master plan.
5-17-103. Report to legislature.
5-17-104. Compensation and expenses.

Part 1

Composition, Terms, and Officers

5-17-101. Capitol building and planning committee — appointment, composition, and meetings. (1) There is a capitol building and planning committee consisting of 16 members as follows:

(a) six members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) six members of the senate appointed by the committee on committees on a bipartisan basis;

(c) the director of the department of administration;

(d) the administrator of the architectural and engineering division of the department of administration;

(e) a representative of the governor's office designated by the governor; and

(f) the director of the Lewis and Clark areawide planning organization who shall serve as a nonvoting member.

(2) The committee shall select a chairman who may call meetings at his discretion for the conduct of committee business.

History: En. Sec. 1, Ch. 141, L. 1979; amd. Sec. 1, Ch. 608, L. 1981.

Compiler's Comments

1981 Amendment: In (1), increased from 8 to 16 members; and in (1)(a) and (b), increased from two to six members.

Appropriation: Section 3, Ch. 608, L. 1981, provided: "There is appropriated $15,000 for the biennium ending June 30, 1983, from the capitol land grant account (04120) to the legislative council to fund the activities of the Capitol Building and Planning Committee."

Effective Date: Section 4, Ch. 608, L. 1981, provided: "This act is effective on passage and approval." Approved May 1, 1981.

5-17-102. Function of committee — capitol area master plan. (1) The function of the committee is to establish and maintain a master plan for the orderly development of state buildings in the immediate area of the capital city. The master plan shall be developed and maintained with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County based without limitation upon zoning regulations, population trends, and plans for rapid transit development;

(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and of state property in the immediate area of the capital city.

(2) The committee shall consult with and advise the department of administration concerning the assignment of space in the capitol complex and the actual placement of busts, statues, memorials, or art displays of a permanent nature within public areas of the capitol complex. No such item may be permanently displayed unless authorized by the legislature.

(3) The committee shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol complex.

(4) The committee shall serve as the legislature's representative in the preparation and implementation of plans for renovation and remodeling of the capitol. In this capacity the committee may decide, based on its study and analysis, the allocation and use of space in the capitol, including without limitation the location of legislative chambers and committee rooms following any remodeling. Allocation of space shall include adequate space in the capitol for the staff of the legislative finance committee, legislative audit committee, and the legislative council.

History: **En. Sec. 2, Ch. 141, L. 1979; amd. Sec. 2, Ch. 608, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (4).

Appropriation: Section 3, Ch. 608, L. 1981, provided: "There is appropriated $15,000 for the biennium ending June 30, 1983, from the capitol land grant account (04120) to the legislative council to fund the activities of the Capitol Building and Planning Committee."

Effective Date: Section 4, Ch. 608, L. 1981, provided: "This act is effective on passage and approval." Approved May 1, 1981.

5-17-103. Report to legislature. The committee shall prepare a written report of its activities and recommendations and present the report to the legislature at each regular session. To prepare its report and recommendations, the committee may receive assistance from the legislative council.

History: **En. Sec. 3, Ch. 141, L. 1979.**

5-17-104. Compensation and expenses. Legislative members are entitled to receive compensation and expenses as provided in 5-2-302 while engaged in committee business.

History: **En. Sec. 4, Ch. 141, L. 1979.**

CHAPTER 18

REVENUE OVERSIGHT COMMITTEE

Part 1 — Composition—Powers and Duties

Section

5-18-101. Definitions.
5-18-102. Revenue oversight committee — appointment and composition.
5-18-103. Term of office.
5-18-104. Vacancies.
5-18-105. Officers.
5-18-106. Meetings and compensation.
5-18-107. Powers and duties of the committee — duty to review revenue rules — legislative oversight of the department of revenue — committee reports.
5-18-108. Biennial critique.
5-18-109. Legislative intent — poll.
5-18-110. Evidentiary value of legislative poll.

Part 1

Composition — Powers and Duties

Part Compiler's Comments

Coal Tax Oversight Subcommittee: Section 2, Ch. 619, L. 1979, as amended by sec. 1, Ch. 587, L. 1981, provided: "(1) There is a coal tax oversight subcommittee of the revenue oversight committee for the biennium ending June 30, 1983.

(2) The subcommittee consists of four legislators who are not members of the revenue oversight committee. Two members must be from the senate and two members must be from the house of representatives. No more than two members may be members of the same political party. The subcommittee shall be appointed by the speaker of the house and the senate committee on committees.

(3) The subcommittee may:

(a) review the programs financed by the coal severance tax funds; and

(b) consider any matters relating to coal taxation.

(4) The subcommittee shall elect a chairman and may meet upon the call of that chairman. The subcommittee shall report and make recommendations to the revenue oversight committee."

5-18-101. Definitions. In this chapter "committee" means the revenue oversight committee created in 5-18-102.

History: **En. Sec. 1, Ch. 268, L. 1979.**

5-18-102. Revenue oversight committee — appointment and composition. (1) There is a revenue oversight committee.

(2) The committee consists of:

(a) six members of the senate appointed by the committee on committees in consultation with the chairman of the senate taxation committee and the minority leader of the senate;

(b) six members of the house of representatives appointed by the speaker in consultation with the chairman of the house taxation committee and the minority leader of the house.

(3) No more than three members from each house may be of the same political party.

(4) Members must be appointed before the 90th legislative day of a regular session.

History: **En. Sec. 2, Ch. 268, L. 1979.**

Compiler's Comments

Coal Tax Oversight Subcommittee: Section 2, Ch. 619, L. 1979, as amended to extend the date in subsection (1) to 1983 by Sec. 1, Ch. 587, L. 1981, provided: "(1) There is a coal tax oversight subcommittee of the revenue oversight committee for the biennium ending June 30, 1983.

(2) The subcommittee consists of four legislators who are not members of the revenue oversight committee. Two members must be from the senate and two members must be from the house of representatives. No more than two members may be members of the same political party. The subcommittee shall be appointed by the speaker of the house and the senate committee on committees.

(3) The subcommittee may:

(a) review the programs financed by the coal severance tax funds; and

(b) consider any matters relating to coal taxation.

(4) The subcommittee shall elect a chairman and may meet upon the call of that chairman. The subcommittee shall report and make recommendations to the revenue oversight committee."

Effective Date: Section 2, Ch. 587, L. 1981, provided: "This act is effective on passage and approval." Approved May 1, 1981.

5-18-103. Term of office. Appointments to the committee are for 2 years. A member of the committee serves until his term of office as a legislator is ended or his successor is appointed, whichever occurs first.

History: **En. Sec. 3, Ch. 268, L. 1979.**

5-18-104. Vacancies. (1) A vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A vacancy occurring when the legislature is not in session must be filled by the selection of a member of the appropriate house and political party by the remaining members of the committee.

(3) An appointment to the committee under this section is for the unexpired term of the original member.

History: **En. Sec. 4, Ch. 268, L. 1979.**

5-18-105. Officers. The committee shall elect one of its members as chairman and may elect other officers it considers necessary.

History: **En. Sec. 5, Ch. 268, L. 1979.**

5-18-106. Meetings and compensation. (1) The committee shall meet as often as may be necessary during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: **En. Sec. 6, Ch. 268, L. 1979.**

5-18-107. Powers and duties of the committee — duty to review revenue rules — legislative oversight of the department of revenue — committee reports. (1) The committee shall review all proposed rules of the department of revenue filed with the secretary of state.

(2) The committee may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department of revenue whenever a rulemaking hearing will not be held in accordance with the provisions of 2-4-302 through 2-4-305;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412.

(3) The committee shall exercise legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed budgets;

(b) proposed legislation;

(c) pending litigation; and

(d) major contracts and personnel actions of the department.

(4) The committee may investigate and issue reports on any matter concerning taxation or the department of revenue.

History: **En. Sec. 7, Ch. 268, L. 1979.**

5-18-108. Biennial critique. The committee shall prepare a biennial critique of the department of revenue's activities that the department shall publish as an appendix to the biennial report of the department.

History: **En. Sec. 8, Ch. 268, L. 1979.**

5-18-109. Legislative intent — poll. (1) If the legislature is not in session, the committee may poll the members of the legislature by mail to determine whether a proposed rule of the department of revenue is consistent with the intent of the legislature.

(2) If 20 or more legislators object in writing to any rule of the department of revenue, the committee shall poll the members of the legislature.

(3) The poll shall include an opportunity for the department of revenue to present a written justification for the rule to the members of the legislature.

History: **En. Sec. 9, Ch. 268, L. 1979.**

5-18-110. Evidentiary value of legislative poll. (1) The results of a poll conducted by the committee are admissible in a court proceeding involving the validity of a rule.

(2) If the results of the poll show that the majority of the members of both houses find a rule contrary to the intent of the legislature, the rule shall be conclusively presumed to be contrary to the legislative intent in a court proceeding involving its validity.

History: **En. Sec. 10, Ch. 268, L. 1979.**

TITLE 6

RESERVED

TITLE 7

LOCAL GOVERNMENT

Ch.
1. General Provisions.
2. Creation, Alteration, and Abandonment of Local Governments.
3. Alternative Forms of Local Government.
4. Officers.
5. General Operation and Conduct of Business.
6. Financial Administration and Taxation.
7. Debt Management.
8. Acquisition, Transfer, and Management of Property and Buildings.
Chapters 9 and 10 reserved.
11. General Provisions Related to Services.
12. Improvement Districts.
13. Utility Services.
14. Transportation.
15. Housing and Construction.
16. Culture, Social Services, and Recreation.
Chapters 17 through 20 reserved.
21. Business, Agriculture, and Livestock Services and Regulation.
22. Weed and Pest Control.
23. Domestic Animal Control and Protection.
Chapters 24 through 30 reserved.
31. General Emergency and Protective Services.
32. Law Enforcement.
33. Fire Protection.
34. Medical Services and Boarding Homes for the Aged.
35. Cemetery Services.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Nature of Self-Government Local Governments

Section
7-1-101. Self-government powers.
7-1-102. Authorization for self-government services and functions.
7-1-103. General power government limitations not applicable.
7-1-104. Legislative power vested in legislative bodies.
7-1-105. State law applicable until superseded.
7-1-106. Construction of self-government powers.
Sections 7-1-107 through 7-1-110 reserved.
7-1-111. Powers denied.
7-1-112. Powers requiring delegation.
7-1-113. Consistency with state regulation required.
7-1-114. Mandatory provisions.

Parts 2 through 20 reserved

Part 21 — Counties

7-1-2101. Nature of county.

7-1-2102. Name of county.
7-1-2103. County powers.
7-1-2104. Exercise of county power.
Sections 7-1-2105 through 7-1-2110 reserved.
7-1-2111. Classification of counties.
7-1-2112. Designation of county classification by county commissioners.

Parts 22 through 40 reserved

Part 41 — Municipalities

7-1-4101. Nature of municipalities.
7-1-4102. Name of municipality.
7-1-4103. Repealed. Sec. 30, Ch. 455, L. 1979.
7-1-4104. Repealed. Sec. 30, Ch. 455, L. 1979.
Sections 7-1-4105 through 7-1-4110 reserved.
7-1-4111. Classification of municipalities.
7-1-4112. Exceptions from classification system.
7-1-4113. Basis of classification.
7-1-4114. Advance in classification of municipalities.
7-1-4115. Procedure to advance municipal classification.
7-1-4116. Officers of reclassified municipality.
7-1-4117. Status of legislative actions taken prior to reclassification.
7-1-4118. Reduction in classification of municipalities.
Sections 7-1-4119 and 7-1-4120 reserved.
7-1-4121. General definitions.
7-1-4122. Distribution of powers.
7-1-4123. Legislative powers.
7-1-4124. Powers.
7-1-4125. Limit on liability.
7-1-4126. Administrative rules.
7-1-4127. Publication of notice.
7-1-4128. Notice.
7-1-4129. Mail notice.
7-1-4130. Petition.
7-1-4131. Public hearing.
7-1-4132. Protest.
7-1-4133. Signatures.
7-1-4134. Rights on behalf of government or corporation.
7-1-4135. Posting.
7-1-4136. Oaths.
7-1-4137. Oath of office.
7-1-4138. Public servants.
7-1-4139. Waiver of mail notice or protest.
7-1-4140. Facsimile signature.
7-1-4141. Public meeting required.
7-1-4142. Public participation.
7-1-4143. Participation.
7-1-4144. Public records.
7-1-4145. State reports.
7-1-4146. Reports of departments, boards, and authorities.
7-1-4147. State technical advice and assistance.
7-1-4148. Penalty.
7-1-4149. Applicability.

Part 1

Nature of Self-Government Local Governments

7-1-101. Self-government powers. As provided by Article XI, section 6, of the Montana constitution, a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. These powers include but are not limited to the powers granted to general power governments.

History: **En. 47A-7-101 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-101.**

7-1-102. Authorization for self-government services and functions. A local government with self-government powers may provide any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter. These services and functions include but are not limited to those services and functions which general power government units are authorized to provide or perform.

History: **En. 47A-7-102 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-102.**

7-1-103. General power government limitations not applicable. A local government unit with self-government powers which elects to provide a service or perform a function that may also be provided or performed by a general power government unit is not subject to any limitation in the provision of that service or performance of that function except such limitations as are contained in its charter or in state law specifically applicable to self-government units.

History: **En. 47A-7-103 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-103.**

7-1-104. Legislative power vested in legislative bodies. The powers of a self-government unit, unless otherwise specifically provided, are vested in the local government legislative body and may be exercised only by ordinance or resolution.

History: **En. 47A-7-104 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-104.**

7-1-105. State law applicable until superseded. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner provided in chapter 5, part 1 and subject to the limitations provided in this part.

History: **En. 47A-7-105 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-105.**

7-1-106. Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority.

History: **En. 47A-7-106 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-106.**

7-1-107 through 7-1-110 reserved.

7-1-111. Powers denied. A local government unit with self-government powers is prohibited the exercise of the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), 7-33-4128, or 7-33-4129, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power which it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of lands with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of natural resources and conservation with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute or which defines an offense as a felony or which fixes the penalty or sentence for a misdemeanor in excess of a fine of $500 or 6 months' imprisonment or both such fine and imprisonment, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that it has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects Title 87 (fish and game) or Title 75, chapter 7, part 1.

History: En. 47A-7-201 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-201.

7-1-112. Powers requiring delegation. A local government with self-government powers is prohibited the exercise of the following powers unless the power is specifically delegated by law:

(1) the power to authorize a tax on income or the sale of goods or services, except that this section shall not be construed to limit the authority of a local government to levy any other tax or establish the rate of any other tax;

(2) the power to regulate private activity beyond its geographic limits;

(3) the power to impose a duty on another unit of local government, except that nothing in this limitation shall affect the right of a self-government unit to enter into and enforce an agreement on interlocal cooperation;

(4) the power to exercise any judicial function, except as an incident to the exercise of an independent self-government administrative power;

(5) the power to regulate any form of gambling, lotteries, or gift enterprises.

History: En. 47A-7-202 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-202.

7-1-113. Consistency with state regulation required. (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.

(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

History: En. 47A-7-203 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-203.

7-1-114. Mandatory provisions. (1) A local government with self-government powers is subject to the following provisions:

(a) All state laws providing for the incorporation or disincorporation of cities and towns; for the annexation, disannexation, or exclusion of territory from a city or town; for the creation, abandonment, or boundary alteration of counties; and for city-county consolidation;

(b) Sections 7-3-104 through 7-3-106, 7-3-111 through 7-3-114, and 7-3-1101 through 7-3-1105;

(c) All laws establishing legislative procedures or requirements for units of local government;

(d) All laws regulating the election of local officials;

(e) All laws which require or regulate planning or zoning;

(f) Any law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service;

(g) Any law regulating the budget, finance, or borrowing procedures and powers of local governments, except that the mill levy limits established by state law shall not apply;

(h) Title 70, chapters 30 and 31.

(2) These provisions are a prohibition on the self-government unit acting other than as provided.

History: En. 47A-7-204 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-204.

Parts 2 through 20 reserved

Part 21

Counties

7-1-2101. Nature of county. (1) A county is the largest political division of the state having corporate power.

(2) Every county is a body politic and corporate and as such has the power specified in this code or in special statutes and such powers as are necessarily implied from those expressed.

History: (1)En. Sec. 4100, Pol. C. 1895; re-en. Sec. 2781, Rev. C. 1907; re-en. Sec. 4293, R.C.M. 1921; Cal. Pol. C. Sec. 3901; re-en. Sec. 4293, R.C.M. 1935; Sec. 16-101, R.C.M. 1947; (2)En. Sec. 4190, Pol. C. 1895; re-en. Sec. 2870, Rev. C. 1907; re-en. Sec. 4441, R.C.M. 1921; Cal. Pol. C. Sec. 4000; re-en. Sec. 4441, R.C.M. 1935; Sec. 16-801, R.C.M. 1947; R.C.M. 1947, 16-101, 16-801.

7-1-2102. Name of county. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties. This provision does not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county.

History: En. Sec. 4192, Pol. C. 1895; re-en. Sec. 2872, Rev. C. 1907; re-en. Sec. 4443, R.C.M. 1921; Cal. Pol. C. Sec. 4002; re-en. Sec. 4443, R.C.M. 1935; R.C.M. 1947, 16-803.

7-1-2103. County powers. A county has power to:

(1) sue and be sued;

(2) purchase and hold lands within its limits;

(3) make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers;

(4) make such orders for the disposition or use of its property as the interests of its inhabitants require;

(5) levy and collect such taxes for the purposes under its exclusive jurisdiction as are authorized by this code or by special statutes.

History: En. Sec. 1, p. 498, Bannack Stat.; re-en. Sec. 1, p. 433, Cod. Stat. 1871; re-en. Sec. 335, 5th Div. Rev. Stat. 1879; re-en. Sec. 744, 5th Div. Comp. Stat. 1887; amd. Sec. 4193, Pol. C. 1895; re-en. Sec. 2873, Rev. C. 1907; re-en. Sec. 4444, R.C.M. 1921; Cal. Pol. C. Sec. 4003; re-en. Sec. 4444, R.C.M. 1935; R.C.M. 1947, 16-804.

7-1-2104. Exercise of county power. A county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law.

History: En. Sec. 4191, Pol. C. 1895; re-en. Sec. 2871, Rev. C. 1907; re-en. Sec. 4442, R.C.M. 1921; Cal. Pol. C. Sec. 4001; re-en. Sec. 4442, R.C.M. 1935; R.C.M. 1947, 16-802.

7-1-2105 through 7-1-2110 reserved.

7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the several counties of this state shall be classified according to that percentage of the true and full valuation of the property therein upon which the tax levy is made, as follows:

(a) first class—all counties having such a taxable valuation of $50 million or over;

(b) second class—all counties having such a taxable valuation of more than $30 million and less than $50 million;

(c) third class—all counties having such a taxable valuation of more than $20 million and less than $30 million;

(d) fourth class—all counties having such a taxable valuation of more than $15 million and less than $20 million;

(e) fifth class—all counties having such a taxable valuation of more than $10 million and less than $15 million;

(f) sixth class—all counties having such a taxable valuation of more than $5 million and less than $10 million;

(g) seventh class—all counties having such a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less.

History: En. Sec. 1, Ch. 20, L. 1905; re-en. Sec. 2973, Rev. C. 1907; amd. Sec. 1, Ch. 70, L. 1915; amd. Sec. 1, Ch. 76, L. 1917; amd. Sec. 1, Ch. 24, Ex. L. 1919; re-en. Sec. 4741, R.C.M. 1921; re-en. Sec. 4741, R.C.M. 1935; R.C.M. 1947, 16-2419(part); amd. Sec. 38, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

Effective Date: Section 66, Ch. 614, L. 1981, provided: (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

7-1-2112. Designation of county classification by county commissioners. (1) The several boards of county commissioners must, at their regular session in September of each year, make an order designating the class to which such county belongs, as determined by the taxable valuation of such county for the year in which such order is made, under and in accordance with the provisions of 7-1-2111.

(2) Such classification shall not change the government of the county then in existence until the next succeeding first Monday in January.

History: En. Sec. 4331, Pol. C. 1895; re-en. Sec. 3, Ch. 20, L. 1905; re-en. Sec. 2975, Rev. C. 1907; re-en. Sec. 4742, R.C.M. 1921; re-en. Sec. 4742, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1941; amd. Sec. 1, Ch. 40, L. 1974; R.C.M. 1947, 16-2420.

Parts 22 through 40 reserved

Part 41

Municipalities

Part Compiler's Comments

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-1-4121; 7-1-4130; 7-1-4145; 7-1-4147; 7-1-4148 . . . are transferred to the department of administration."

7-1-4101. Nature of municipalities. A city or town is a body politic and corporate with the general powers of a corporation and the powers specified or necessarily implied in this title or in special laws heretofore enacted.

History: En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; re-en. Sec. 4700, Pol. C. 1895; re-en. Sec. 3202, Rev. C. 1907; re-en. Sec. 4955, R.C.M. 1921; Cal Pol. C. Sec. 4354; re-en. Sec. 4955, R.C.M. 1935; R.C.M. 1947, 11-101.

7-1-4102. Name of municipality. Every city or town organized under this title is entitled "the city of ...." (naming it) or "the town of ...." (naming it) and by such name has perpetual succession.

History: En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907; re-en. Sec. 4958, R.C.M. 1921; re-en. Sec. 4958, R.C.M. 1935; R.C.M. 1947, 11-104(part).

7-1-4103. Repealed. Sec. 30, Ch. 455, L. 1979.

History: En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907; re-en. Sec. 4958, R.C.M. 1921; re-en. Sec. 4958, R.C.M. 1935; R.C.M. 1947, 11-104(part).

7-1-4104. Repealed. Sec. 30, Ch. 455, L. 1979.

History: (1)En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4701, Pol. C. 1895; re-en. Sec. 3203, Rev. C. 1907; re-en. Sec. 4956, R.C.M. 1921; Cal. Pol. C. Sec. 4355; re-en. Sec. 4956, R.C.M. 1935; Sec. 11-102, R.C.M. 1947; (2)En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4702, Pol. C. 1895; re-en. Sec. 3204, Rev. C. 1907; re-en. Sec. 4957, R.C.M. 1921; re-en. Sec. 4957, R.C.M. 1935; Sec. 11-103, R.C.M. 1947; R.C.M. 1947, 11-102, 11-103.

7-1-4105 through 7-1-4110 reserved.

7-1-4111. Classification of municipalities. (1) Every city having a population of 10,000 or more is a city of the first class.

(2) Every city having a population of less than 10,000 and more than 5,000 is a city of the second class.

(3) Every city having a population of less than 5,000 and more than 1,000 is a city of the third class.

(4) Every municipal corporation having a population of less than 1,000 and more than 300 is a town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R.C.M. 1921; re-en. Sec. 4959, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969; R.C.M. 1947, 11-201(part); amd. Sec. 1, Ch. 250, L. 1979.

7-1-4112. Exceptions from classification system. Notwithstanding the provisions of 7-1-4111:

(1) every municipal corporation having a population of more than 5,000 and less than 7,500 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a second-class city or a third-class city; and

(2) every municipal corporation having a population of more than 1,000 and less than 2,500 may, by resolution adopted by the city or town council, as the case may be, pursuant to 7-1-4114 through 7-1-4118, be either a city or town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R.C.M. 1921; re-en. Sec. 4959, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969; R.C.M. 1947, 11-201(part).

7-1-4113. Basis of classification. The census taken under the direction of the congress of the United States in 1890 and every 10 years thereafter shall be the basis upon which the respective populations of said municipal corporations shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such direct enumeration constitutes such basis.

History: En. Sec. 4711, Pol. C. 1895; re-en. Sec. 3207, Rev. C. 1907; re-en. Sec. 4960, R.C.M. 1921; re-en. Sec. 4960, R.C.M. 1935; R.C.M. 1947, 11-202.

7-1-4114. Advance in classification of municipalities. Whenever it manifestly appears to a city or town council from the last federal, state, county, city, or town census that such city or town has the requisite population to entitle it to be classified as provided in 7-1-4111 and 7-1-4112, such city or town must be advanced as provided in 7-1-4115.

History: En. Sec. 4950, Pol. C. 1895; amd. Sec. 1, p. 225, L. 1897; re-en. Sec. 3447, Rev. C. 1907; re-en. Sec. 4969, R.C.M. 1921; re-en. Sec. 4969, R.C.M. 1935; R.C.M. 1947, 11-301.

7-1-4115. Procedure to advance municipal classification. (1) If it appears by such census that the city or town contains the requisite population to be advanced, the council must thereupon by resolution declare, as the case may be, that:

(a) the town is advanced to a city of the first, second, or third class;

(b) a city of the third class is advanced to a city of the second or first class; or

(c) a city of the second class is advanced to a city of the first class.

(2) The city or town council must file a certified copy of such resolution in the office of the county clerk of the county and in the office of the secretary of state. Whereupon such town becomes a city of the first, second, or third class; a city of the third class becomes a city of the second or first class; and a city of the second class becomes a city of the first class, as the case may be, to be governed under the provisions of this code relative to cities and towns.

History: En. Sec. 4951, Pol. C. 1895; amd. Sec. 2, p. 225, L. 1897; re-en. Sec. 3448, Rev. C. 1907; re-en. Sec. 4970, R.C.M. 1921; re-en. Sec. 4970, R.C.M. 1935; R.C.M. 1947, 11-302.

7-1-4116. Officers of reclassified municipality. The first election of officers of the new municipal corporation organized under the provisions of 7-1-4114 through 7-1-4118 must be at the first annual municipal election after such proceedings, and the old officers remain in office until the new officers are elected and qualified.

History: En. Sec. 4952, Pol. C. 1895; re-en. Sec. 3449, Rev. C. 1907; re-en. Sec. 4971, R.C.M. 1921; re-en. Sec. 4971, R.C.M. 1935; R.C.M. 1947, 11-303.

7-1-4117. Status of legislative actions taken prior to reclassification. All ordinances, bylaws, and resolutions adopted by the old municipal corporation, as far as consistent with the provisions of this code relative to cities and towns, remain in force until repealed by the council of the new municipal corporation.

History: En. Sec. 4953, Pol. C. 1895; re-en. Sec. 3450, Rev. C. 1907; re-en. Sec. 4972, R.C.M. 1921; re-en. Sec. 4972, R.C.M. 1935; R.C.M. 1947, 11-304.

7-1-4118. Reduction in classification of municipalities. (1) Whenever it appears by the census taken by the United States, the state, or otherwise that the population of a city of the first or second class has decreased so as to be insufficient in number to entitle it to be a city of that class, the council must thereupon, by resolution declare that such city be reduced to a city of the second class or town as the case may be.

(2) A certified copy of such resolution must be filed in the office of the county clerk and in the office of the secretary of state, and thereafter such city becomes a city of the second class or a town, as the case may be, to be governed under the provisions of this code relative to cities and towns.

(3) The provisions of 7-1-4116 and 7-1-4117 apply to this section.

History: En. Sec. 4954, Pol. C. 1895; re-en. Sec. 3451, Rev. C. 1907; re-en. Sec. 4973, R.C.M. 1921; re-en. Sec. 4973, R.C.M. 1935; R.C.M. 1947, 11-305.

7-1-4119 and 7-1-4120 reserved.

7-1-4121. General definitions. As used in 7-1-4121 through 7-1-4149, unless otherwise provided, the following definitions apply:

(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations thereon.

(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.

(4) "Employee" means a person other than an officer who is employed by a municipality.

(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity which incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body where one is appointed, carries out his duties.

(11) "Officer" means a person holding a position with a municipality which is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of administration.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203(3).

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department or office or political subdivision thereof.

(19) "Public property" means any and all property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) "Reproduced" means the act of reproducing a design on any surface by any process.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Service" means an authorized function or activity performed by local government.

(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities.

History: En. Sec. 1, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (16).

Codification: Sec. 31, Ch. 455, L. 1979, provided: "Sections 1 through 29 are intended to be codified as an integral part of Title 7, chapter 1, part 41, and the provisions contained in Title 7, chapter 1, part 41, apply to sections 1 through 29."

7-1-4122. Distribution of powers. (1) A municipality has legislative, executive, and judicial powers.

(2) All legislative powers are vested in the governing body of the municipality.

(3) Executive powers are vested as provided in the form of government adopted by the municipality.

(4) The judicial powers of a municipality are vested in the municipal court.

History: En. Sec. 23, Ch. 455, L. 1979.

7-1-4123. Legislative powers. A municipality with general powers has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

(1) preserve peace and order and secure freedom from dangerous or noxious activities;

(2) secure and promote the general public health and welfare;

(3) provide any service or perform any function authorized or required by state law;

(4) exercise any power granted by state law;

(5) levy any tax authorized by state law;

(6) appropriate public funds;

(7) impose a special assessment reasonably related to the cost of any special service or special benefit provided by the municipality or impose a fee for the provision of a service;

(8) grant franchises; and

(9) provide for its own organization and the management of its affairs.

History: **En. Sec. 24, Ch. 455, L. 1979.**

7-1-4124. Powers. A municipality with general powers has the power, subject to the provisions of state law, to:

(1) enact ordinances and resolutions;

(2) sue and be sued;

(3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;

(4) contract with persons, corporations, or any other governmental entity;

(5) pay debts and expenses;

(6) borrow money;

(7) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;

(8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;

(9) make grants and loans of money, property, and services for public purposes;

(10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;

(11) hire, direct, and discharge employees and appoint and remove members of boards;

(12) ratify any action of the municipality or its officers or employees which could have been approved in advance;

(13) have a corporate seal and flag;

(14) acquire by eminent domain as provided in Title 70, chapter 30, any interest in property to provide any service or facility authorized by law;

(15) initiate a civil action to restrain or enjoin violation of an ordinance;

(16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;

(17) conduct a census;

(18) conduct inventories of public property and preparatory studies;

(19) condemn and demolish hazardous structures;

(20) purchase insurance and establish self-insurance plans;

(21) impound animals and other private property creating a nuisance or obstructing a street or highway;

(22) establish quarantines; and

(23) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions.

History: **En. Sec. 25, Ch. 455, L. 1979.**

7-1-4125. Limit on liability. (1) As provided in Article II, section 18, of the Montana constitution, a municipality has no immunity from suit for injury to a person or property, except as may be specifically provided by law by a two-thirds vote of each house of the legislature.

(2) A local government has the right but not the duty to purchase insurance to protect against claims for injury to a person or property.

(3) Local governments are subject to the provisions of Title 2, chapter 9.
History: **En. Sec. 26, Ch. 455, L. 1979.**

7-1-4126. Administrative rules. The governing body may by ordinance authorize the chief executive to adopt administrative rules. All administrative rules shall be entered in an administrative code that shall be available in the office of the municipality.
History: **En. Sec. 2, Ch. 455, L. 1979.**

7-1-4127. Publication of notice. (1) When a municipality is required to publish notice, publications shall be in a newspaper, except that in a municipality with a population of 500 or less or in which no newspaper is published, publication may be made by posting in three public places in the municipality which have been designated by ordinance.

(2) The newspaper shall be:

(a) of general paid circulation with a second-class mailing permit;

(b) published at least once a week;

(c) published in the county where the municipality is located;

(d) published continuously in the county for the 12 months preceding the awarding of the contract.

(3) In a county where no newspaper meets these qualifications, publication shall be made in a qualified newspaper in an adjacent county.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.
History: **En. Sec. 3, Ch. 455, L. 1979.**

7-1-4128. Notice. When notice of a hearing or other official act is required, the following shall apply:

(1) The notice shall be published two times with at least 6 days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice.

(3) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.
History: **En. Sec. 4, Ch. 455, L. 1979.**

7-1-4129. Mail notice. (1) Unless otherwise specifically provided, when a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice properly addressed in the United States mail with postage paid at the first-class rate;

(b) sending the notice by registered or certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class when notice is to be given by mail to all electors or residents of a municipality.

(2) The notice shall contain:

(a) the date, time, and place at which the hearing or other action will be taken;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement shall apply only to persons whose addresses are known.

History: En. Sec. 5, Ch. 455, L. 1979.

7-1-4130. Petition. (1) Whenever a petition is authorized, unless the section authorizing the petition establishes different criteria, it shall be valid if it is signed by 15% of the electors of the municipality and meets the following requirements:

(a) contains a statement of the purpose for which it is circulated, sufficient to meet the specific criteria set out in the section authorizing the petition;

(b) each signature is followed by the printed name of the signer, the address of the signer's place of residence, and the date of the signing; and

(c) the petition contains the date it was first circulated and a statement that all signatures must be collected within 90 days of that date.

(2) Unless otherwise provided, all petitions shall be filed with the county election administrator, who shall determine the sufficiency of the signatures. No petition filed after the deadline for filing the petition, if any, shall be considered.

(3) Within 10 working days of the date the petition was filed, the county election administrator shall determine the adequacy of the petition.

(4) Inadequate petitions shall be returned but may be amended or supplementary signatures may be obtained, and the petition may be refiled prior to the deadline for filing the petition.

(5) Within 10 days of its second filing, the county election administrator shall again determine the adequacy of the petition. If it is still determined inadequate, it shall be rejected without prejudice to the filing of a new petition to the same effect.

(6) If a petition is determined adequate, the county election administrator shall:

(a) certify its adequacy and submit it to the governing body without delay;

(b) submit a copy of the petition to the attorney of the municipality.

(7) A person may in writing withdraw his signature from a previously filed petition at any time prior to final action of the governing body.

(8) (a) The attorney for the municipality shall prepare and transmit to the governing body without delay a concise statement not exceeding 100 words. This statement shall express a true and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language.

The statement may not intentionally be an argument and may not intentionally be written so as to create prejudice for or against the measure.

(b) At the same time the statement of purpose is prepared, the attorney shall prepare statements of the implications of a vote for or against a ballot issue. The statements of implication may be no more than 25 words each and shall be in simple, impartial language clearly explaining the meaning of a vote for and a vote against the issue.

(c) Prior to an election or an official action involving a petition issue, the governing body shall publish copies of the statement of purpose and statement of implications to the procedure established in 7-1-4128.

(9) The department of administration, in cooperation with the secretary of state, shall prepare and provide each municipality with:

(a) a standard petition form;

(b) sample petition forms for initiatives, referendums, and recall elections; and

(c) sample petition forms for creation of districts.

(10) Each municipality shall make available to the public on request sample petition forms.

History: En. Sec. 6, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (9).

7-1-4131. Public hearing. (1) When required, the governing body shall conduct public hearings for the purpose of providing reasonable opportunity for citizen participation prior to final decisions.

(2) At a minimum, a public hearing shall provide for submission of both oral and written testimony for and against the action or matter at issue. If the hearing is not held before the ultimate decision makers, provision shall be made for the transmittal of a summary or transcript of the testimony received to the ultimate decision makers prior to their determination.

(3) Public hearings may be held at regular or special meetings of the governing body.

(4) Petitions and letters received by the governing body or executive prior to the hearing shall be entered by reference into the minutes of the governing body and considered as other testimony received at the hearing.

(5) Hearings may be adjourned from day to day or to a date certain.

(6) Except for budget hearings, the governing body may designate a subcommittee or hearing examiner to conduct public hearings.

History: En. Sec. 7, Ch. 455, L. 1979.

7-1-4132. Protest. (1) Whenever a protest is authorized, it is sufficient if it is in writing, signed, and contains the following:

(a) a description of the action protested sufficient to identify the action against which the protest is lodged;

(b) a statement of the protestor's qualifications to protest the action against which the protest is lodged, including ownership of property affected by the action; and

(c) the address of the person protesting.

(2) Protests shall be submitted as provided by law and ordinance. The person receiving protests for a municipality shall note on each protest the date it was received.

(3) A protest which contains the required information may be signed by more than one person. A protest signed by more than one person is a valid protest by each signer.

(4) A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

(5) Signers are encouraged to print their names after their signatures.

History: En. Sec. 8, Ch. 455, L. 1979.

7-1-4133. Signatures. (1) The signatures and addresses on petitions shall be the same as the signatures and addresses on voter registration cards and, if not registered or if not required by law to be an elector, their common signature. If the elector has signed using an initial letter only in place of a name written on the registry card or using a name or the initial letter of a name that is not on the registry card, the signature may nevertheless be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registry card as to provide reasonable certainty of its authenticity.

(2) The signatures on protests and waivers shall be the accepted common signatures.

History: En. Sec. 9, Ch. 455, L. 1979.

7-1-4134. Rights on behalf of government or corporation. The chief executive of a municipality or political subdivision of the state, the responsible agent of a federal or state agency, or the chief executive officer of a corporation may exercise the right of petition, protest, or voting on behalf of property owned by the government or corporation.

History: En. Sec. 10, Ch. 455, L. 1979.

7-1-4135. Posting. (1) The governing body shall specify by resolution a public location for posting information and shall order erected a suitable posting board.

(2) When posting is required, a copy of the document shall be placed on the posting board, and a copy shall be available at the municipal office.

History: En. Sec. 11, Ch. 455, L. 1979.

7-1-4136. Oaths. The chief executive and all elected municipal officers may administer oaths.

History: En. Sec. 12, Ch. 455, L. 1979.

7-1-4137. Oath of office. Every elected municipal officer shall take the oath of office prescribed in Article III, section 3, of the Montana constitution. The oath of office, certified by the official before whom the same was taken, shall be filed with the county election administrator before the officer exercises any official duties.

History: En. Sec. 13, Ch. 455, L. 1979; amd. Sec. 19, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "section 3" for "section 4".

7-1-4138. Public servants. All municipal officers and employees are public servants for the purpose of determining the offense of obstructing a public servant as provided in 45-7-302.

History: **En. Sec. 14, Ch. 455, L. 1979.**

7-1-4139. Waiver of mail notice or protest. (1) If all persons entitled to mail notice waive in writing the mail notice requirement, the governing body may proceed without the required mail notice.

(2) If all persons entitled to protest an action waive in writing their right to protest, the governing body may proceed without publishing notice or meeting other requirements designed to permit protests to be filed.

(3) A waiver is sufficient if it is in writing, signed, and contains the following:

(a) a description of the mailed notice or protest right waived;

(b) a statement of the protestor's qualifications to waive the mailed notice or protest right;

(c) the address of the person;

(d) a statement that the waiver of notice is voluntarily and knowingly given, with knowledge of the signer's constitutional rights to notice.

(4) Waivers shall be submitted as provided by law and ordinance. The person receiving waivers for a local government shall note on each waiver the date it was received.

(5) A waiver which contains the required information may be signed by more than one person. A waiver signed by more than one person is a valid waiver by each signer.

(6) Signers are encouraged to print their names after their signatures.

History: **En. Sec. 15, Ch. 455, L. 1979.**

7-1-4140. Facsimile signature. Any officer or employee may use a facsimile signature or seal as provided in Title 2, chapter 16.

History: **En. Sec. 16, Ch. 455, L. 1979.**

7-1-4141. Public meeting required. (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality shall be open to the public except as provided in 2-3-203.

(2) Appropriate minutes shall be kept of all public meetings and shall be made available upon request to the public for inspection and copying.

History: **En. Sec. 17, Ch. 455, L. 1979.**

7-1-4142. Public participation. Each municipal governing body, committee, board, authority, or entity, in accordance with Article II, section 8, of the Montana constitution and Title 2, chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public.

History: **En. Sec. 18, Ch. 455, L. 1979.**

7-1-4143. Participation. In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision.

History: **En. Sec. 19, Ch. 455, L. 1979.**

7-1-4144. Public records. (1) Except as provided in subsection (2), all records and other written materials in the possession of a municipality shall be available for inspection and reproduction by any person during normal office hours. The governing body may impose reasonable fees for providing copies of public records.

(2) Personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public unless the person they concern requests they be made public.

(3) Except as provided by law and as determined by the chief law enforcement administrator, law enforcement records which relate to matters in which the right to individual privacy or law enforcement security exceeds the merits of public disclosure shall not be available to the public.

History: En. Sec. 20, Ch. 455, L. 1979.

7-1-4145. State reports. (1) Municipal governing bodies, chief executives, officers, employees, departments, boards, and authorities shall file with state agencies in a timely fashion all reports and information required by state law.

(2) The department of administration shall coordinate to the greatest extent possible the collection of data by state and federal agencies in order to minimize the requests of municipalities and to maximize access to information collected on municipalities.

(3) Prior to requesting reports from a municipality, all state agencies shall notify the department of administration of the intended request.

History: En. Sec. 21, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (2) and (3).

7-1-4146. Reports of departments, boards, and authorities. (1) All departments, boards, and authorities shall file an annual report with the chief executive, who shall compile the reports and present them to the governing body.

(2) The chief executive may specify the form, content, and deadline for filing reports.

History: En. Sec. 22, Ch. 455, L. 1979.

7-1-4147. State technical advice and assistance. (1) All state agencies are authorized and encouraged to provide technical assistance to municipalities.

(2) The technical assistance services shall not include those that can be as reasonably and expeditiously obtained through business channels.

(3) State agencies are encouraged to develop the capacity to provide technical advice and assistance without charge to municipalities, but they are also encouraged to establish service charges for special or extraordinary technical advice.

(4) The department of administration shall coordinate technical advice and assistance provided to municipalities by state agencies.

(5) State agencies may lend personnel, equipment, and machinery to municipalities.

History: En. Sec. 27, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (4).

7-1-4148. Penalty. Where a municipality is required by state law to provide information to a state agency and fails to provide the required information, the department of administration may issue an order stopping payment of any state financial aid to the municipality. Upon provision of the information, all financial aid which was stopped because of failure to provide the information shall be paid to the municipality.

History: En. Sec. 28, Ch. 455, L. 1979; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs".

7-1-4149. Applicability. (1) Except as provided in subsection (2), a provision of 7-1-4121 through 7-1-4148 applies only in the absence of other laws governing the same subject matter.

(2) The governing body may by ordinance adopt the procedures and provisions contained in 7-1-4121 through 7-1-4148 and make them applicable to all proceedings before the body.

History: En. Sec. 29, Ch. 455, L. 1979.

CHAPTER 2

CREATION, ALTERATION, AND ABANDONMENT OF LOCAL GOVERNMENTS

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7-2-102. Apportionment of indebtedness and credits upon alteration of boundary of local government.
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Part 1

General Provisions Applicable to Local Government

7-2-101. Transcript of records upon alteration of boundary of local government. When any territory shall be detached from any county, city, or town in this state and annexed to any other county, city, or town:

(1) it shall be the duty of the proper officer of such county, city, or town to which said territory shall be annexed to demand from the proper officer of the county, city, or town having custody of the public records of the territory a transcript of all public records pertaining to such territory; and

(2) it shall be the duty of such officer from whom they shall be demanded to furnish such authenticated transcripts of all such records in his office, which shall be paid for, after they shall be so furnished, by the county, city, or town to which said territory shall be annexed.

History: En. Sec. 1, Ch. 36, L. 1911; re-en. Sec. 4418, R.C.M. 1921; re-en. Sec. 4418, R.C.M. 1935; R.C.M. 1947, 16-611.

7-2-102. Apportionment of indebtedness and credits upon alteration of boundary of local government. When any territory shall be detached from any county, city, or town of this state and annexed to any other county, city, or town therein, such county, city, or town to which the same shall be annexed shall be liable to the county, city, or town from which the territory was so detached for its just share of liabilities and indebtedness and shall receive a just share of the credits from the county, city, or town from which the same shall have been detached, which shall be apportioned by ascertaining what ratio the portion detached bears to the territory from which the same was detached. The last prior assessment shall be used as a basis in determining the same.

History: En. Sec. 2, Ch. 36, L. 1911; re-en. Sec. 4419, R.C.M. 1921; re-en. Sec. 4419, R.C.M. 1935; R.C.M. 1947, 16-612.

7-2-103. Collection of taxes upon alteration of boundary of local government. Subject to the provisions of part 27 of this chapter, if any territory is detached from any county, city, or town and is annexed to any other county, city, or town therein, it does not invalidate or interfere with the collection of taxes in such territory and the taxes shall be collected by and the returns made to the county to which the territory is attached in the manner provided by law for levying and collecting taxes.

History: En. Sec. 3, Ch. 36, L. 1911; re-en. Sec. 4420, R.C.M. 1921; re-en. Sec. 4420, R.C.M. 1935; R.C.M. 1947, 16-613; amd. Sec. 2, Ch. 250, L. 1979.

Parts 2 through 20 reserved

Part 21

General Provisions Applicable to Counties

7-2-2101. Repealed. Sec. 21, Ch. 250, L. 1979.

History: En. Sec. 4156, Pol. C. 1895; re-en. Sec. 2850, Rev. C. 1907; re-en. Sec. 4304, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4304, R.C.M. 1935; R.C.M. 1947, 16-112.

7-2-2102. Apportionment of liabilities and assets upon creation or enlargement of county. (1) Every county which shall be enlarged or created from the territory taken from any other county or counties shall:

(a) be liable for a pro rata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken; and

(b) be entitled to a pro rata proportion of the assets of the county or counties from which such territory is taken.

(2) The share of liabilities and assets shall be determined as provided by 7-2-2204 and 7-2-2244 through 7-2-2246.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part).

7-2-2103. Qualifications for municipality or village to be county seat. No city, town, or village shall become the temporary or permanent county seat of any county organized under the provisions of part 22 or created by an act of the legislature unless such city or town shall have been incorporated in the manner provided by law or unless such village shall have been regularly platted and a plat thereof filed in the office of the county clerk and recorder and there be fifty qualified electors residing within the boundaries of such platted village.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R.C.M. 1921; re-en. Sec. 4392, R.C.M. 1935; R.C.M. 1947, 16-503(part).

7-2-2104. Transfer of certain records upon alteration of boundary of county. (1) In the event territory is taken from one county and added to another county, such plats and records covering such territory taken shall be transferred to the enlarged county.

(2) If any portion of the cost of preparing such records, maps, plats, or charts remains unpaid, said enlarged county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921; re-en. Sec. 4421, R.C.M. 1921; re-en. Sec. 4421, R.C.M. 1935; R.C.M. 1947, 16-614(part).

7-2-2105. Establishment of townships. The board of county commissioners must not set off or organize any new township unless a petition is presented to the board, signed by at least 50 citizens resident therein.

History: En. Sec. 18, p. 502, Bannack Stat.; re-en. Sec. 18, p. 436, Cod. Stat. 1871; re-en. Sec. 352, 5th Div. Rev. Stat. 1879; re-en. Sec. 757, 5th Div. Comp. Stat. 1887; re-en. Sec. 4231, Pol. C. 1895; re-en. Sec. 2895, Rev. C. 1907; re-en. Sec. 4468, R.C.M. 1921; re-en. Sec. 4468, R.C.M. 1935; R.C.M. 1947, 16-1102.

Part 22

Creation of New Counties by Petition

7-2-2201. Authorization to create new counties. New counties may, from time to time, be formed and created in this state from portions of one or more counties which shall have been created and in existence for a period of more than 2 years, in the manner set forth and provided in this part.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part).

7-2-2202. Limitations on creation of new counties. (1) No new county shall be established which shall reduce any county to an assessed valuation of less than $12 million, inclusive of all assessed valuation as shown by the last preceding assessment.

(2) No new county shall be formed which contains an assessed valuation of property less than $10 million, inclusive of all assessed valuation, as shown by the last preceding assessment of the county or counties from which such new county is to be established.

(3) No new county shall be established which shall reduce the area of any existing county from which territory is taken to form such new county to less than 1,200 square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties.

(4) No new county shall be formed which contains less than 1,000 square miles of surveyed land, exclusive of all forest reserve land or Indian reservations not open for settlement.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part).

7-2-2203. Limitation on location of boundary of new county. (1) Except as provided in subsection (2), no line of any new county shall pass within 15 miles of the courthouse situated at the county seat of the county sought to be divided.

(2) Such county line may be run within a distance of 10 miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat. In such cases, a petition signed by at least 50% of the registered electors in the proposed new county shall be presented to the judge of the district court in which the affected county is located, asking for the appointment of a commission of five disinterested individuals, who shall determine if the topographical conditions warrant the fixing of the county division lines closer than at 15 miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in 7-2-2205 and 7-2-2212.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part); amd. Sec. 263, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-2-2204. Basis for determination of assessed valuation. For the purposes of this part, the assessed valuation of all property, whether included within the boundaries of a proposed new county or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in Montana.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4391, R.C.M. 1921; re-en. Sec. 4391, R.C.M. 1935; amd. Sec. 34, Ch. 566, L. 1977; R.C.M. 1947, 16-502.

7-2-2205. Petition for creation of new county. (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of the then-existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties.

(2) (a) The petition shall be signed by at least 50% of the registered electors of the proposed new county.

(b) In cases where the proposed new county is to be formed from portions of two or more counties, separate petitions shall be presented from the territory taken from each county, and each of the petitions shall be signed by at least 50% of the registered electors of the proposed portions.

(c) The signatures need not all be appended to one paper but may be signed to several petitions, which must be similar in form. When so signed, the several petitions may be fastened together and shall be treated and presented as one petition.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 264, Ch. 571, L. 1979.

7-2-2206. Contents of petition. Such petition or petitions shall contain:

(1) a particular description of the boundaries of the proposed new county;

(2) a statement that no line thereof passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided in this part;

(3) a statement of the assessed valuation of such proposed county as shown by the last preceding assessment, inclusive of all assessed valuation;

(4) a statement of the surveyed area, in square miles, which will remain in the county or counties from which territory is taken to form such new county after such county is formed, and a statement of the surveyed area in square miles, which will be in the new county after formation;

(5) the name of the proposed new county;

(6) a prayer that such proposed new county be organized into a new county under the provisions of this part.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2207. Affidavits to be attached to petition. (1) There shall be attached and filed with said petition or petitions an affidavit of five qualified electors residing within each county sought to be divided, to the effect that:

(a) they have read said petition and examined the signatures affixed thereto and they believe that the statements therein are true;

(b) it is signed by at least 50% of the qualified electors, as herein provided, of the proposed new county or of the proposed portion thereof taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties;

(c) the signatures affixed thereto are genuine; and

(d) each of such persons so signing was, at the date of such signing, a qualified elector of such county therein sought to be divided.

(2) Such petition or petitions, so verified, and the verification thereof shall be accepted in all proceedings permitted or provided for in this part as prima facie evidence of the truth of the matters and facts therein set forth.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2208. Role of board of county commissioners — intercounty communication. (1) A board of county commissioners receiving a petition pursuant to 7-2-2205 shall be empowered and have jurisdiction to do and perform all acts provided for in this part for each of the several counties from which any proposed territory is to be taken and shall direct that a certified copy of all orders and proceedings had before such board shall be certified by the county clerk to the board of each of the several counties from which any territory is taken by the proposed new county.

(2) All officers of any such county shall comply with the orders of the board of county commissioners in the same manner as if said order had been duly made by the board of each respective county from which territory is proposed to be taken.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2209. Hearing and notice on petition. (1) Upon the filing of such petition or petitions and affidavits with the clerk of the board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the petitions and of any opponents thereto, which date must be not later than 30 days after the filing of such petition with the clerk of said board.

(2) The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties but not within the proposed new county and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the county clerk shall order and cause to be published, at least once a week for 2 weeks preceding the date fixed for such hearing, a notice in substantially the following form:

Notice

Notice is hereby given that a petition has been presented to the board of county commissioners of .... County (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portions of .... County and .... County (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting to be so held), when and where all persons interested may appear and oppose the granting of said petition and make any objections thereto.

Dated at .... at ...., Montana.

...., County Clerk

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2210. Bond to cover election costs. Said petitioners shall, on or before the date fixed for the hearing required by 7-2-2209, file with the board of county commissioners a bond, to be approved by said board, in an amount of $5,000, payable to the county in which said petition is filed and conditioned that the obligors named in said bond will pay to said county all expenses incurred in the election provided for in 7-2-2215, not exceeding the amount specified in said bond, in the event that at the election provided for in 7-2-2215, more than 50% of the votes cast at said election are "For the new county of .... (naming the proposed new county), No".

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2211. Hearing on petition — protest. (1) At the time fixed for the hearing, the board of county commissioners shall hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. The board may adjourn the hearing from time to time, but not for more than 10 days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in the petition.

(2) (a) No petition, protest, or petition for the exclusion of territory may be considered unless it is filed at least 1 day before the time fixed for the hearing.

(b) A petition for the exclusion of territory shall contain the names of not less than 50% of the registered electors of any territory to be excluded.

(c) All such territory being excluded must be in one block containing an area of not less than 36 square miles and be totally within one county and contiguous thereto.

(3) No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signatures from the petition for the exclusion of territory may be received or considered which are not filed within 5 days after the filing of the petition for such exclusion of territory.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(3); amd. Sec. 3, Ch. 250, L. 1979; amd. Sec. 265, Ch. 571, L. 1979.

7-2-2212. Exclusions and additions of territory upon petition. (1) Except as provided in subsection (3), on final hearing, the board of commissioners, upon petition of not less than 50% of the registered electors (as shown by the official registration records on the day of the filing of the petition) of any territory lying within the proposed new county and contiguous to the boundary line of the proposed new county and of the old county from which such territory is proposed to be taken and lying entirely within the single old county and described in the petition, asking that this territory not be included within the proposed new county, must make such changes in the proposed boundaries as will exclude the territory from the new county and shall establish and define the boundaries. Petitions for exclusion shall be disposed of in the order in which they are filed with the clerk of the board.

(2) Except as provided in subsection (3), on final hearing, the board, upon petition of not less than 50% of the registered electors of any territory

lying outside the proposed new county and contiguous to the boundary line of the proposed new county and of the old county or counties from which such territory is proposed to be taken, asking that this territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in the new county and shall establish and define the boundaries.

(3) (a) The segregation of the territory from any old county or counties may not leave the county or counties with less than $12 million of assessed valuation, based upon the last assessment roll.

(b) No change or changes so made may result in reducing the valuation of the proposed new county to less than an assessed valuation of $10 million, inclusive of all assessed valuation.

(c) No change may be made which leaves the territory so excluded separate and apart from and without the county of which it was formerly a part.

(4) On final determination of boundaries, no changes in the boundaries originally proposed may be made except as prayed for in the petition or petitions or to correct clerical errors or uncertainties.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(5); amd. Sec. 4, Ch. 250, L. 1979; amd. Sec. 266, Ch. 571, L. 1979.

7-2-2213. Resolution of board of county commissioners. The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

(1) the boundaries of the proposed new county, and the boundaries so determined by the board shall be the boundaries of the proposed new county if it is created as herein provided;

(2) whether the petition contains the genuine signatures of at least 50% of the registered electors of the proposed new county as herein required or, in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least 50% of the registered electors of that portion of each of the existing counties which is proposed to be taken into the proposed new county;

(3) whether any line of the proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided;

(4) whether the proposed new county will contain property, according to the last preceding assessment, which will equal in amount at least $4 million, inclusive of all assessed valuation;

(5) whether the area of any existing county from which territory is taken to form the new county will be reduced to less than 1,200 square miles of surveyed land by taking the territory proposed to be taken therefrom to form the new county;

(6) whether the area of the proposed new county will contain at least 1,000 square miles of surveyed land to form the new county;

(7) the class to which the proposed new county will belong after its creation and the name of the proposed new county as stated in the petition;

(8) whether the area embraced within the proposed new county will be reasonably compact.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(4); amd. Sec. 267, Ch. 571, L. 1979.

7-2-2214. Division of territory of proposed county into various districts. The board of county commissioners shall divide the proposed new county into a convenient number of township, road, and school districts; define their boundaries; and designate the names of such districts if the board determines that:

(1) the formation of the proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than $12 million, inclusive of the assessed valuation, or the area thereof to less than 1,200 square miles of surveyed land;

(2) the proposed new county contains property of an assessed valuation of at least $10 million, inclusive of all assessed valuation, and the proposed new county has an area of at least 1,000 square miles of land;

(3) no line of the proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided; and

(4) the petition contains the genuine signatures of at least 50% of the registered electors of the proposed new county or, in cases where separate petitions are presented from portions of two or more existing counties as herein required, each of the petitions contains the genuine signatures of at least 50% of the registered electors of that portion of the proposed new county from which it is taken.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(1); amd. Sec. 268, Ch. 571, L. 1979.

7-2-2215. Election on question of creating new county — proclamation and notice. (1) Within 2 weeks after its determination of the truth of the allegations of the petition, the board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day, not less than 90 days or more than 120 days thereafter, in the territory which is proposed to be taken for the new county, for the purpose of determining whether such territory shall be established and organized into a new county and for the election of officers and location of a county seat therefor in case the vote at the election is in favor of the establishment and organization of the new county.

(2) All registered electors residing within the proposed new county who are registered electors of the county or counties from which territory is taken to form the proposed new county and who are to be registered under the provisions of the registration laws of the state shall be entitled to vote at the election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in Montana.

(3) The proclamation and notice of election shall be published as provided in 13-1-108, and a copy thereof shall be mailed immediately by the election administrator of the county in which the petition is filed to the election administrator of each county from which territory is to be taken for the proposed new county.

(4) The proclamation calling the election and the notice thereof provided for in this part shall be made and given exclusively by the board with which the petition for the formation and establishment of the new county is filed.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 269, Ch. 571, L. 1979.

7-2-2216. Establishment of election precincts. Said board of county commissioners shall also, if necessary for the purpose of the election provided for in 7-2-2215, change the boundaries of the election precincts in said old county or counties to make the same conform to the boundaries of the proposed new county, provided that the boundary lines of no such precinct shall extend beyond the boundary lines of the then-existing county in which it is located and from which the territory is proposed to be taken.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part).

7-2-2217. Appointment of election officials. The board of county commissioners shall appoint election judges to act at the election provided for in 7-2-2215 and to be paid by the board.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 270, Ch. 571, L. 1979.

7-2-2218. Form of ballot. (1) The proclamation and notice required by 7-2-2215 shall require the electors to cast ballots which shall contain the words "For the new county of .... (giving the name of the proposed new county) — Yes" and "For the new county of .... (giving the name of the proposed new county) — No", and each elector desiring to vote for the establishment and organization of the new county shall mark a cross (X) opposite the words "For the new county of .... — Yes" in the manner now required by law in other elections, and each elector desiring to vote against the establishment and organization of the new county shall mark a cross (X) opposite the words "For the new county of .... — No" in the manner now required by law in other elections.

(2) The ballots shall also contain the names of individuals to be voted for to fill the various elective offices designated in the proclamation for counties of the class to which the proposed county will belong, as determined by the board of county commissioners, as herein otherwise provided.

(3) There shall also be printed upon the ballot the words "For the county seat" and the names of all cities or towns which may have filed with the election administrator a petition, signed by at least 25 registered electors, nominating any city or town within the proposed new county for the county seat. The elector shall designate his choice for county seat by marking a cross (X) opposite the name of the city or town for which he desires to cast his ballot.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 271, Ch. 571, L. 1979.

7-2-2219. Conduct of election. (1) (a) The board issuing the proclamation and notice of election pursuant to 7-2-2215 shall cause the county election administrator to furnish to the election judges of each precinct in the proposed new county all election supplies and equipment necessary to conduct the election and which are not specifically directed to be furnished by the election administrator of another county or counties.

(b) The election administrator of each county from which territory is taken for the proposed new county shall, not less than 5 days before the date of the election, furnish for each precinct within the proposed new county a precinct register for the precincts of the proposed new county which are within their respective counties.

(2) The election provided for in 7-2-2215 shall be governed and controlled by the general election laws of the state, so far as the same are applicable and except as otherwise provided herein. The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of these laws relating to primary elections in this state, apply to any election provided for in this part. All returns of an election shall be made to and canvassed by the board of county commissioners calling the election.

(3) All nominations of candidates for offices required to be filled at the election shall be made in the manner provided by law for the nomination of candidates by petition.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 5, Ch. 250, L. 1979; amd. Sec. 272, Ch. 571, L. 1979.

7-2-2220. Cost of election. The expense of said election shall be paid by the county calling such election, and any other county affected thereby shall pay its proportion thereof as provided in 7-2-2244.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2221. Determination of county seat — temporary county seat. (1) At the special election to be held as provided in 7-2-2215, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county, and the majority of all the votes cast therefor shall determine the election thereon.

(2) (a) In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat. The temporary county seat selected upon the organization of such county shall remain as such county seat until the permanent county seat shall be established as provided by law.

(b) In case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter.

(c) When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

History: Ap. p. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; Sec. 16-505, R.C.M. 1947; Ap. p. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R.C.M. 1921; re-en. Sec. 4392, R.C.M. 1935; Sec. 16-503, R.C.M. 1947; R.C.M. 1947, 16-503(part), 16-505(part).

7-2-2222. Effect of election — resolution by county commissioners. (1) If, upon the canvass of the votes cast at the election, it appears that more than 50% of the votes cast on the issue are "For the new county of .... — Yes", the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same belongs and under the name of .... County, and that the city or town receiving the highest number of votes cast at the election for county seat shall be the county seat of the county until removed in the manner provided by law and designate and declare the individuals receiving, respectively, the highest number of votes for the several offices to be filled at the election to be duly elected to the offices.

(2) However, if upon such canvass it appears that more than 50% of the votes cast on the issue at the election are "For the new county of .... — No", the board canvassing the vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease. No other proceedings in relation to any other division of the old county or counties shall be instituted for at least 2 years after such determination.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 273, Ch. 571, L. 1979.

7-2-2223. Procedure to complete creation of county. (1) The board of county commissioners shall immediately file a copy of its resolution, authorized by 7-2-2222(1) and duly certified, in the office of the secretary of state. Ninety days after the date of such filing:

(a) the new county is considered to be fully created;

(b) the organization thereof is considered completed; and

(c) the county officers, other than the county commissioners and the county clerk, are entitled to enter upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state.

(2) The election administrator of the county with which the petition was filed must immediately make out and deliver to each of the individuals declared and designated to be elected a certificate of election authenticated by his signature and the seal of the county. The individuals elected members of the board and the county clerk shall, immediately upon receiving their certificates of election, assume the duties of their respective offices.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 6, Ch. 250, L. 1979; amd. Sec. 274, Ch. 571, L. 1979.

7-2-2224. Offices and supplies for new county. The board of county commissioners of the new county may provide a suitable place for the county officers and purchase supplies necessary for the proper conduct of the county government.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 7, Ch. 250, L. 1979.

7-2-2225. Officers of new county. (1) Except as provided in subsections (2) through (4) of this section, at the election provided for in 7-2-2215, there shall be chosen a board of county commissioners and such other county, township, and district officers as are provided by law for counties of the class to which the new county belongs.

(2) All elected, qualified, and acting officers of the county or counties who may reside within the proposed new county are considered to be officers of the new county if they file, within 5 days after the final hearing and determination of the petition for the proposed new county, with the board of county commissioners whose duty it shall be to call the election their intention to become officers of the proposed new county, and the board issuing

the proclamation of the election shall omit providing for the election of any such officers as have filed their declaration to continue in office.

(3) All elected, qualified, and acting justices of the peace residing within the proposed new county shall hold office as justices of the peace in the new county for the remainder of the term for which they were elected.

(4) All elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of such county into school districts, as provided in 7-2-2214, shall hold office as school trustees in the new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as these districts are organized as provided by this part.

(5) The officers elected or appointed under the provisions of this part shall each perform the duties and receive the compensation now provided by general law for the office to which they have been appointed or elected in the counties of the class to which the new county belongs.

History: **En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; R.C.M. 1947, 16-507(part); amd. Sec. 8, Ch. 250, L. 1979.**

7-2-2226. Term of office for initial officers of new county. All the officers elected at said election or appointed under this part shall hold their offices until the time provided by general law for the election and qualification of such officers in this state and until their successors are elected and qualified. For the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed from and including the first Monday after January 1 following the preceding general election.

History: **En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part).**

7-2-2227. Qualification, oath of office, and bond. (1) Each person elected or appointed to fill an office of such new county under the provisions of this part shall qualify in the manner provided by law for such officer, except as otherwise provided, and shall enter upon the discharge of the duties of his office within such time as herein provided after the receipt of the certificate of his election.

(2) Each of such officers may take the oath of office before any officer authorized by the laws of Montana to administer oaths.

(3) The bond of any officer from which a bond is required shall be approved by any judge of the district court of the district to which such new county is attached for judicial purposes.

History: **En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; R.C.M. 1947, 16-507(part).**

7-2-2228. Judicial district for new county. Said new county, when created and organized in pursuance of the provisions of this part, shall be attached to such judicial district as may be designated by the governor of Montana, in a proclamation to be issued by him designating such new county as attached to the particular judicial district for judicial purposes.

History: **En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; R.C.M. 1947, 16-507(part).**

7-2-2229 through 7-2-2240 reserved.

7-2-2241. Commission to determine and adjust indebtedness and assessments for old and new counties. (1) It shall be the duty of the persons elected to or continuing to hold the office of county commissioner of said new county to meet at the county seat thereof within 5 days after all of them shall have qualified, and upon organization of said board of county commissioners, it shall notify the governor of the state of the organization of said county. Thereupon, it shall be the duty of the governor to appoint three persons, one of whom shall be a resident and a taxpayer within the new county and no two of whom shall be from any one county, to form and be a board of commissioners.

(2) The proceedings required in 7-2-2244 through 7-2-2246 to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county in the manner and at the ratio provided in 7-2-2244 through 7-2-2246.

History: (1)En. Sec. 6, Ch. 226, L. 1919; re-en. Sec. 4397, R.C.M. 1921; re-en. Sec. 4397, R.C.M. 1935; Sec. 16-510, R.C.M. 1947; (2)En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; Sec. 16-511, R.C.M. 1947; R.C.M. 1947, 16-510(part), 16-511(part).

7-2-2242. Conduct of business by commission. (1) The commissioners provided for in 7-2-2241 shall, within 10 days after the notice of the appointment, meet at the county seat of the new county and organize by electing from their number a chairman and also by electing a secretary, who must not be a member of said commission. Thereafter, such commission may meet at such place or places as it may select. A majority of such commissioners shall constitute a quorum for the transaction of business.

(2) (a) Said commission shall have power to compel by citation or subpoena, signed by their president and secretary, the attendance of such persons and the production of such books and papers before said commission as may be required in the performance of the duties imposed by this part, except that the official records of any county or counties from which said new county was formed shall in no case be taken away from the county seat of said county.

(b) It shall be the duty of the sheriff of any county to execute in his county all lawful orders and citations of the said commission, and for any services so performed, the sheriff shall be allowed the same fees as are allowed to him for services in civil actions.

(c) All witnesses attending before said commission shall be entitled to the same compensation and mileage as is allowed to witnesses in courts of record. No witness shall be excused from attendance at the time and place mentioned in said order or citation by reason of the failure of the officer making such service to tender to such witness his fees and mileage in advance.

History: En. Sec. 6, Ch. 226, L. 1919; re-en. Sec. 4397, R.C.M. 1921; re-en. Sec. 4397, R.C.M. 1935; R.C.M. 1947, 16-510(part).

7-2-2243. Compensation of commission members. Members of the board of commissioners provided for under 7-2-2241 shall receive a compensation of not to exceed $8 per day for every day they are actually employed under the provisions of this part. All of which expenses, together with the reasonable expenses of stationery, postage, and incidental expenses, shall be borne in equal proportions by the counties affected by such division, including said new county. The amounts payable by each county shall be paid by the treasurers of the respective counties after the same shall have been presented to and allowed by the board of county commissioners as is provided by law for claims against any county.

History: En. Sec. 8, Ch. 226, L. 1919; re-en. Sec. 4399, R.C.M. 1921; re-en. Sec. 4399, R.C.M. 1935; R.C.M. 1947, 16-512.

7-2-2244. Role of commission. (1) (a) Said board of commissioners shall, immediately after its organization:

(i) ascertain the costs of the election held hereunder and apportion the same pro rata among each of the counties from which territory was taken to form such new county;

(ii) ascertain the indebtedness of each county from which territory was taken to form the new county as the same existed at the time when the result of the election was declared by the board of county commissioners as hereinbefore provided;

(iii) ascertain the total value of all property at the time belonging to each of said counties from which territory was taken and situated within the limits of said old counties, respectively; and

(iv) ascertain the assessed value of all property in each of the original old counties from which territory was so taken, according to the last-completed assessment made for said county, and also the assessed value, under the same assessment, of all property within the territory of the new county which shall have been taken from the old county or counties from which said new county was formed.

(b) In the determination of the value of county property, all buildings and their furniture, real estate, road tools, machinery, and all steel bridges which may have been constructed and in use for a period less than 10 years shall be taken into consideration by the commissioners.

(2) They shall then find the difference between the amount of the indebtedness of the old county and the value of the property belonging to the old county at the date of the declaration of the result of said election, as hereinbefore provided, and if such indebtedness exceeds the value of such property belonging to the old county, the new county shall pay to the old county a due proportion thereof, to be determined as follows: as said assessed value of the property in the old county is to the assessed value of the property in the territory to be incorporated by this part within the new county from said old county, so is the amount of said excess to the amount to be paid by said new county to said old county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2245. Commission to certify information to county commissioners. Said board of commissioners shall certify forthwith to the board of county commissioners of the new county and the old counties thereby affected the amount constituting the due proportion of said excess payable by such new county to each of them and also the value of any property belonging to each old county at the time when said division took effect, as hereinbefore provided, which is situated in the new county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2246. Settlement between counties following adjustment of indebtedness. (1) The sum of said ascertained value of the property referred to in 7-2-2245 added to the ascertained proportion of the excess referred to in 7-2-2245 which the new county is to pay the old county and its proportion of the expense of said election, as aforesaid, shall be an indebtedness from the new county to the old county, and the property situated, as aforesaid, in the new county shall upon settlement therefor as provided in this part, become the property of the new county, and the old county shall pay the entire indebtedness against it.

(2) If, upon the settlement between the old and the new counties, as herein provided for, the new county shall be found to be indebted to the old county or either of the old counties, the money necessary to pay said indebtedness shall be raised by a tax levied upon the property contained in said new county and said new county shall pay the same. Such payment by said new county may be made in not more than three equal annual payments or by funds to be derived from the sale of bonds of said new county, as may be determined by a resolution of the board of county commissioners of said new county adopted within 1 year after the receipt of the statement from the board of commissioners, as aforesaid, of the amount or amounts due from it.

(3) If the value of the property belonging to the old county exceeds the indebtedness of the old county, then the old county shall pay to the new county a due proportion of such excess, which proportion shall be determined by the board of commissioners and shall be paid by the old county to the new county in the same manner and subject to the same conditions herein provided for payment by the new county to the old county when the indebtedness of the old county exceeds the value of the property in the old county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2247 through 7-2-2250 reserved.

7-2-2251. Collection of delinquent taxes. Delinquent taxes due the old county against property situated in the new county shall be transcribed in and collected by the new county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2252. Assessment and collection of taxes for new county. (1) After the creation of a new county, its officers shall complete all proceedings necessary for the assessment or collection of the state and county taxes for the then-current year.

(2) (a) All acts and steps taken by the officers of the old county or counties prior to the creation of the new county are considered as having been performed by the officers of the new county for the benefit of the new county. Upon the creation of the new county, it shall be the duty of the officers of the old county or counties to immediately execute and deliver to the board of county commissioners of the new county copies of all assessments or other proceedings relative to the assessment and collection of the current state and county taxes on property in the new county. Such copies shall be

filed with the respective officers of the new county who would have the custody of the same if the proceedings had been originally had in the new county. Such certified copies are considered as originals in the new county, and all proceedings therein recited are considered as original proceedings in the new county and shall have the same effect as if the proceedings therein stated had been had at the proper time and in the proper manner by the respective officials of the new county.

(b) The officials of the new county shall proceed with the assessment and collection of the taxes as if the proceedings originally had in the old county or counties had been originally had in the new county.

History: **En. Sec. 9, Ch. 226, L. 1919; re-en. Sec. 4400, R.C.M. 1921; re-en. Sec. 4400, R.C.M. 1935; R.C.M. 1947, 16-513; amd. Sec. 9, Ch. 250, L. 1979.**

7-2-2253. Procedure to transfer money to school and road funds. (1) The county superintendent of schools of an old county shall furnish the county superintendent of schools of the new county with a certification of the average number belonging (ANB) in the different school districts in the territory set apart to form the new county and shall certify to the board of county commissioners of the old county the amount due. The board of the old county shall order a warrant drawn on the treasury of the old county for all the money that is or may be due by apportionment or otherwise to the different school districts embraced in the new county and taken from the old county.

(2) The county treasurer shall certify to the county commissioners of an old county the amount due in the different road funds. The county commissioners shall order a warrant drawn on the treasury of the old county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county and taken from the old county, which amounts shall be properly credited in both counties.

(3) Whenever in the formation of a new county a road or school district has been divided, the board of county commissioners shall by resolution direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

History: **En. Sec. 10, Ch. 226, L. 1919; re-en. Sec. 4401, R.C.M. 1921; re-en. Sec. 4401, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1973; R.C.M. 1947, 16-514; amd. Sec. 10, Ch. 250, L. 1979.**

7-2-2254. Transfer and transcription of records. (1) The board of county commissioners of any new county must provide suitable books and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property situated in the new county or the title thereof.

(2) All chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificates of sale, liens, and original affidavits of registration which may affect or relate to property or persons situated within the new county shall be delivered by the county clerk of the old county to the county clerk of the new county and shall be preserved by the county clerk of the new county as permanent files of the new county.

History: **En. Sec. 11, Ch. 226, L. 1919; re-en. Sec. 4402, R.C.M. 1921; amd. Sec. 1, Ch. 75, L. 1925; re-en. Sec. 4402, R.C.M. 1935; R.C.M. 1947, 16-515(part); amd. Sec. 11, Ch. 250, L. 1979.**

7-2-2255. Transfer of court files and actions. (1) The files of all actions in the office of the clerk of the district court of the old county, whether reduced to judgment or pending, for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county shall be delivered by the clerk of the district court of the old county to the clerk of the district court of the new county to be kept and preserved by him as permanent files of such new county, to the end that only the minutes and other entries in books kept by the clerk of the district court need be transcribed.

(2) All actions pending in the district court of the old county or counties for the recovery of the possession of quieting title to or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county shall, forthwith upon the delivery of the files in said action to the clerk of the district court of the new county as provided in subsection (1), be transferred to the district court in which the new county may be attached for judicial purposes and thereafter shall be subject to the same laws as if said action had been originally brought in the district court of the new county.

History: **(1)En. Sec. 11, Ch. 226, L. 1919; re-en. Sec. 4402, R.C.M. 1921; amd. Sec. 1, Ch. 75, L. 1925; re-en. Sec. 4402, R.C.M. 1935; Sec. 16-515, R.C.M. 1947; (2)En. Sec. 12, Ch. 226, L. 1919; re-en. Sec. 4403, R.C.M. 1921; amd. Sec. 2, Ch. 75, L. 1925; re-en. Sec. 4403, R.C.M. 1935; Sec. 16-516, R.C.M. 1947; R.C.M. 1947, 16-515(part), 16-516.**

7-2-2256. Publication by posting of notice. Whenever in this part publication of any notice is provided for and no newspaper of general circulation is published within the territory in which said notice is required to be published, notice shall be given by posting copies of such notice in at least 10 public places in such territory for the same length of time said notice was required to be published.

History: **En. Sec. 13, Ch. 226, L. 1919; re-en. Sec. 4404, R.C.M. 1921; re-en. Sec. 4404, R.C.M. 1935; R.C.M. 1947, 16-517.**

Part 23

Organization of New Counties Created by Legislation

7-2-2301. Meeting and organization of board of county commissioners upon creation of new county by legislature. Whenever a county is created in this state by legislative enactment, it shall be the duty of the persons appointed to the office of county commissioner of such county by the act creating it to meet at some place in the county, to be agreed upon by a majority of said county commissioners, within 15 days after the passage of the act creating the county and then and there to organize as a board of county commissioners by electing one of their number chairman.

History: **En. Sec. 1, Ch. 135, L. 1911; re-en. Sec. 4378, R.C.M. 1921; re-en. Sec. 4378, R.C.M. 1935; R.C.M. 1947, 16-401(part).**

7-2-2302. Role of county clerk of county created by legislature. (1) The individual appointed to the office of county clerk in the bill creating the county shall be notified in writing, by the county commissioners or some one of them, of the time and place of the meeting required by 7-2-2301. He must attend the meeting and act as the clerk thereof and keep a record of the proceedings.

(2) If no individual is appointed to the office of county clerk by the act creating the county, the commissioners shall at the meeting select some individual qualified to hold the office of county clerk to act as clerk of the meeting.

(3) The individual appointed county clerk shall also serve as election administrator.

History: **En. Sec. 1, Ch. 135, L. 1911; re-en. Sec. 4378, R.C.M. 1921; re-en. Sec. 4378, R.C.M. 1935; R.C.M. 1947, 16-401(part); amd. Sec. 275, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-2-2303. Applicability of general laws to new counties and officers. All laws of general nature applicable to the several counties of Montana and to the officers thereof and to their powers and duties shall be applicable to a new county and the officers thereof from and after the creation of the county, except as otherwise provided in this part or the act creating the county.

History: **En. Sec. 11, Ch. 135, L. 1911; re-en. Sec. 4388, R.C.M. 1921; re-en. Sec. 4388, R.C.M. 1935; R.C.M. 1947, 16-411.**

7-2-2304 through 7-2-2310 reserved.

7-2-2311. Designation of temporary county seat. (1) Immediately after the organization of the board of county commissioners, as provided in 7-2-2301, said board shall, by a resolution spread upon the minutes of its proceedings, designate some place within said county as and to be the temporary county seat until the permanent county seat shall be located as provided in this part.

(2) In the event of a majority of the county commissioners failing to agree upon the location of the temporary county seat, each county commissioner shall write the name of the place he favors as the temporary county seat on a slip of paper. Said slips shall be enclosed in envelopes of the same size, color, and texture and shall be deposited in a box or other suitable receptacle; and the county clerk, in the presence of said commissioners, shall draw out one of the slips. Thereupon, the county commissioners shall, by resolution spread upon the minutes, declare the place named on the slip so drawn by the county clerk to be the temporary county seat of said county.

(3) The place so designated shall be the temporary county seat of said county until the permanent county seat is located by the electors of said county at the general election to be held on the first Tuesday after the first Monday of November of the next even-numbered year after the creation of the county or at a special election as hereinafter provided.

History: **En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R.C.M. 1921; re-en. Sec. 4379, R.C.M. 1935; amd. Sec. 3, Ch. 406, L. 1973; R.C.M. 1947, 16-402(1), (2).**

7-2-2312. Election on question of locating permanent county seat. (1) Except as provided in subsection (2), at the first general election after the creation of the county, it shall be the duty of the board of county commissioners and election administrator to have separate official ballots printed and distributed for the use of the electors at said election. The ballots shall be in the form and contain the same matter as the ballots provided for in 7-2-2316, and the provisions of 7-2-2316(4) and 7-2-2318 shall apply to and govern the manner of voting and of canvassing said ballots. The board shall declare the result of such election and the location of the permanent county seat, and said county seat shall be located in the manner and according to the provisions of 7-2-2318.

(2) (a) At any time within 6 months after the passage of an act creating a new county, a petition or petitions may be filed with the election administrator of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner provided in this part.

(b) Said petition or petitions must contain in the aggregate the names of at least 100 qualified electors whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein. The petition or petitions, when filed with the board, must also have certificates attached thereto from the election administrator of the county in which the individual or individuals signing the petition resided before the creation of the new county, certifying that the names of the individuals signing said petition or petitions appear in the registration books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county.

History: En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R.C.M. 1921; re-en. Sec. 4379, R.C.M. 1935; amd. Sec. 3, Ch. 406, L. 1973; R.C.M. 1947, 16-402(3) thru (5); amd. Sec. 276, Ch. 571, L. 1979.

7-2-2313. Procedure to hold special election. (1) Upon filing the petition or petitions, duly certified as provided in 7-2-2312, with the election administrator of the new county, he must immediately notify the chairman of the board of county commissioners who, upon receipt of such notice, must call a meeting of the board, to be held within 10 days after the filing of the petition, for the purpose of considering the same. If the board at such meeting finds that said petition conforms to the requirements of and is in accordance with the provisions of 7-2-2312, it shall at the meeting, by a resolution entered in its minutes, call a special election of the registered electors of said county for the purpose of voting upon the question of the location of the permanent county seat.

(2) The election shall be held on Tuesday and not less than 40 or more than 60 days after the date of calling the same. The board must issue an election proclamation containing a statement of the time of the election and the question to be submitted. A copy of this proclamation must be published in some newspaper printed in the county, if any, and posted at each place of election at least 10 days before the election.

History: En. Sec. 3, Ch. 135, L. 1911; re-en. Sec. 4380, R.C.M. 1921; re-en. Sec. 4380, R.C.M. 1935; R.C.M. 1947, 16-403; amd. Sec. 277, Ch. 571, L. 1979.

7-2-2314. Establishment of precincts and polling places — appointment of deputy registrars. (1) At the meeting of the board at which the special election is called for the purpose of locating the permanent county seat, the board shall, by resolution entered in its minutes, divide the county into precincts and establish polling places in the manner provided by law.

(2) It must also, at the same session of the board, appoint deputy registrars for the several precincts established by it, who must possess the qualifications required by law for deputy registrars.

History: En. Sec. 4, Ch. 135, L. 1911; re-en. Sec. 4381, R.C.M. 1921; re-en. Sec. 4381, R.C.M. 1935; R.C.M. 1947, 16-404; amd. Sec. 278, Ch. 571, L. 1979.

7-2-2315. Appointment of election judges. (1) At the same meeting of the board of county commissioners at which the special election for the location of the permanent county seat is called, the board shall appoint three judges of election for each precinct in the county, who shall act as the judges at the election. The judges appointed for the special election must qualify as required by the general election law.

(2) It shall be the duty of the election administrator to have printed and distributed to the election judges the necessary ballots, the form of which shall be as provided in 7-2-2316 and 7-2-2319, and also supply the judges with the necessary supplies required to hold such election in the manner provided by law.

History: En. Secs. 6, 7, Ch. 135, L. 1911; re-en. Secs. 4383, 4384, R.C.M. 1921; re-en. Secs. 4383, 4384, R.C.M. 1935; R.C.M. 1947, 16-406, 16-407(part); amd. Sec. 279, Ch. 471, L. 1979.

7-2-2316. Form of ballot. (1) The form of the ballot used at such elections shall be as follows: there shall be a stub across the top of each ballot and separated therefrom by a perforated line.

(2) Upon the face of the stub there shall be printed the following instructions:

"To vote this ballot the elector will write in the blank space on the ballot the name of the town or place at which he desires the permanent county seat to be located."

(3) The ballot below the perforated line shall be in the following form:

"For the permanent county seat of .... County (here insert name of county) my choice is ...."

(4) When the name of a town or place in a county shall be so inserted in the blank space on such ballot by an elector and the ballot has been cast as provided by law, the same shall be deemed a vote for the designated town or place as the location of the permanent county seat of said county.

History: (1) thru (3)En. Sec. 8, Ch. 135, L. 1911; re-en. Sec. 4385, R.C.M. 1921; re-en. Sec. 4385, R.C.M. 1935; Sec. 16-408, R.C.M. 1947; (4)En. Sec. 9, Ch. 135, L. 1911; re-en. Sec. 4386, R.C.M. 1921; re-en. Sec. 4386, R.C.M. 1935; Sec. 16-409, R.C.M. 1947; R.C.M. 1947, 16-408(part), 16-409(part); amd. Sec. 379, Ch. 571, L. 1979.

7-2-2317. Conduct of election. The polls must be opened and closed, the voting done, the ballots counted, returns made to the board of county commissioners, and all other matters connected with said election carried on and conducted in accordance with and as provided by the general election laws of this state. Any person who from any cause is unable to write may have one of the judges in the presence of another judge write his choice on the ballot.

History: Ap. p. Sec. 7, Ch. 135, L. 1911; re-en. Sec. 4384, R.C.M. 1921; re-en. Sec. 4384, R.C.M. 1935; Sec. 16-407, R.C.M. 1947; Ap. p. Sec. 8, Ch. 135, L. 1911; re-en. Sec. 4385, R.C.M. 1921; re-en. Sec. 4385, R.C.M. 1935; Sec. 16-408, R.C.M. 1947; R.C.M. 1947, 16-407(part), 16-408(part).

7-2-2318. Canvass of returns — declaration of results. (1) The board of county commissioners of said county shall canvass the returns of said election in the manner provided by law for the canvassing of election returns.

(2) Upon such canvassing of returns, the town or place found to have received a majority of all votes cast on such question shall be declared by the board the permanent county seat of the county. The order declaring the result of such election shall be entered of record in the minutes of the proceedings of the board by the county clerk.

(3) From the date of the declaration of the results of the election, the town or place selected shall be and remain, until lawfully changed in the manner provided by law, the permanent county seat of such county. Within 10 days after the declaration of the result of such election, all records and county offices of the county, if located elsewhere, must be moved to and remain at the place declared the permanent county seat.

History: En. Sec. 9, Ch. 135, L. 1911; re-en. Sec. 4386, R.C.M. 1921; re-en. Sec. 4386, R.C.M. 1935; R.C.M. 1947, 16-409(part).

7-2-2319. Procedure in case of failure to select permanent county seat. (1) If no town or place receives a majority of all votes cast on such question, then the town or place receiving the highest number of votes shall be declared by the board and immediately become the temporary county seat of the county, and at the next general election the two towns or places receiving the greatest number of votes at said first election shall be the candidates for the permanent county seat.

(2) (a) At said next general election, the county clerk shall have separate ballots in the form provided for in 7-2-2316 printed and distributed as provided by law, containing the names of said candidates for the permanent county seat.

(b) On the stub of such ballots shall be printed the following instructions:

"To vote this ballot the elector will place an X in the square before the name of the town he intends to vote for."

(c) The form of such ballots below the perforated line shall be as follows:

☐ ....for the permanent county seat

☐ ....for the permanent county seat.

(3) Of said towns or places the one receiving a majority of all the votes cast on such question shall be declared the permanent county seat. The board of county commissioners must canvass the returns and declare the result and the county seat must be located in accordance with the provisions of this part.

History: En. Sec. 10, Ch. 135, L. 1911; re-en. Sec. 4387, R.C.M. 1921; re-en. Sec. 4387, R.C.M. 1935; R.C.M. 1947, 16-410.

Part 24

Transfer and Transcription of Records, Court Actions, and Jury Lists for New Counties

7-2-2401. Transfer of certain records. (1) Any new county shall be entitled to all records, maps, plats, and charts of any old county, any part of whose territory is included in such new county, which records, maps, plats, or charts relate to the classification of lands for taxation purposes and apply exclusively to territory included in such new county. Such records, maps, plats, and charts shall be delivered by the officer or board of such old county to the corresponding officer or board of such new county upon proper receipt therefor and shall be made and become a part of the records of such new county, to all intents and purposes the same as if such records, maps, plats, and charts had been originally prepared and made by such new county.

(2) If any portion of the cost of preparing such records, maps, plats, or charts remains unpaid, said new county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921; re-en. Sec. 4421, R.C.M. 1921; re-en. Sec. 4421, R.C.M. 1935; R.C.M. 1947, 16-614(part).

7-2-2402. Transcription of records. (1) Any county or counties of Montana that shall be formed from portions of another county shall be entitled to have the county records affecting or relating to any and all property situated in the segregated county transcribed from the books of the original county and made a part of the records of the segregated county.

(2) Except as provided in 7-2-2401, it shall be the duty of the county commissioners of any county formed from part of another county to have so much of the records of the original county as relates to the property situated within the segregated county transcribed, as hereinafter provided.

History: (1)En. Sec. 1, p. 217, L. 1893; re-en. Sec. 4166, Pol. C. 1895; re-en. Sec. 2860, Rev. C. 1907; re-en. Sec. 4408, R.C.M. 1921; re-en. Sec. 4408, R.C.M. 1935; Sec. 16-601, R.C.M. 1947; (2)En. Sec. 2, p. 217, L. 1893; re-en. Sec. 4167, Pol. C. 1895; re-en. Sec. 2861, Rev. C. 1907; re-en. Sec. 4409, R.C.M. 1921; re-en. Sec. 4409, R.C.M. 1935; Sec. 16-602, R.C.M. 1947; R.C.M. 1947, 16-601, 16-602.

7-2-2403. Authority to contract for transcription service. Said county commissioners shall have full power and authority to contract for transcribing the records relating to all property situated within the boundaries of the segregated county, and for that purpose the person or persons engaged in the work of transcribing such records shall have access to all records of the county or counties from which segregated.

History: En. Sec. 3, p. 217, L. 1893; re-en. Sec. 4168, Pol. C. 1895; re-en. Sec. 2862, Rev. C. 1907; re-en. Sec. 4410, R.C.M. 1921; re-en. Sec. 4410, R.C.M. 1935; R.C.M. 1947, 16-603.

7-2-2404. Payment for transcription of records. Payment for transcribing such records shall be made by the county contracting therefor and by a warrant or warrants payable out of the general fund of such county.

History: En. Sec. 4, p. 217, L. 1893; re-en. Sec. 4169, Pol. C. 1895; re-en. Sec. 2863, Rev. C. 1907; re-en. Sec. 4411, R.C.M. 1921; re-en. Sec. 4411, R.C.M. 1935; R.C.M. 1947, 16-604.

7-2-2405. Certification of accuracy of transcription. (1) When the transcript of such records provided for herein shall be completed and approved by the county commissioners of such county, they shall be delivered to the county clerk and recorder of the county from which such records were taken. It shall be the duty of such county clerk and recorder to compare the records so transcribed with the original records as the same appear on the record books of the said original county. The county clerk and recorder to whom the transcript shall be delivered for comparison shall certify under oath that the transcribed records are full, complete, and exact copies of the original records.

(2) The county clerk and recorder shall be entitled to $6 per day for his time actually spent in comparing the said records, to be paid out of the general fund of the county requiring such comparison and certificate.

History: **En. Sec. 5, p. 218, L. 1893; re-en. Sec. 4170, Pol. C. 1895; re-en. Sec. 2864, Rev. C. 1907; re-en. Sec. 4412, R.C.M. 1921; re-en. Sec. 4412, R.C.M. 1935; R.C.M. 1947, 16-605.**

7-2-2406. Filing of transcribed records. All records so transcribed, when certified to as being full, complete, and correct, shall be delivered to the county clerk and recorder of the segregated county, shall be filed in the office of the county clerk and recorder of such segregated county, and shall thereupon become and be a part of the records of such county.

History: **En. Sec. 6, p. 218, L. 1893; re-en. Sec. 4171, Pol. C. 1895; re-en. Sec. 2865, Rev. C. 1907; re-en. Sec. 4413, R.C.M. 1921; re-en. Sec. 4413, R.C.M. 1935; R.C.M. 1947, 16-606.**

7-2-2407. Legal effect of transcribed records. A certified copy of the records so transcribed and filed in the office of the county clerk and recorder of any segregated county may be introduced in evidence and shall have the same force and effect as certified copies of original records.

History: **En. Sec. 7, p. 218, L. 1893; re-en. Sec. 4172, Pol. C. 1895; re-en. Sec. 2866, Rev. C. 1907; re-en. Sec. 4414, R.C.M. 1921; re-en. Sec. 4414, R.C.M. 1935; R.C.M. 1947, 16-607.**

7-2-2408 through 7-2-2410 reserved.

7-2-2411. Transfer of court actions affecting real property. (1) In all counties created out of any other county wherever there has been an action or proceeding begun affecting any real property situated within such new county, whether such action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in such real property so affected by such action or proceeding requesting the transfer of the files and papers and records of such action or proceeding to the office of the clerk of the district court of the new county wherein such real property is situated, it shall be the duty of the judge of the district court in which said action or proceeding was originally begun to order that a transfer of all the files and papers of such action or proceeding be made to the office of the clerk of the district court of the new county in which such real property is situated. When such an order of transfer is made, it shall be the duty of the clerk of the district court wherein such action or proceeding was originally instituted to transmit all of the files and papers in such action or proceeding, together with a certified copy of all minutes of the court relating to such action or proceeding, to the clerk of such new county in which the real property, the subject matter of such action or proceeding, is situated.

(2) Said clerk of the district court of the new county in which said property is situated shall, upon the receipt of such files and papers and certified copies of the minutes of the court, file said papers in his office as transferred files from the original county and shall enter and transcribe upon his records any final judgment or decree or order contained in such files or papers or records so transferred.

(3) Upon the receipt and filing of the files and papers in any action or proceeding transferred to a new county in accordance with the provisions of this section, the district court of such new county in which such files and papers shall have been transferred shall have the same jurisdiction with reference to said real property for the enforcement of any decree, judgment, or order that may have been entered therein or for such other proceedings as may be necessary in such action or proceeding as the district court had in the county wherein such action or proceeding was originally begun.

History: (1), (2)En. Sec. 1, Ch. 20, L. 1907; re-en. Sec. 2867, Rev. C. 1907; re-en. Sec. 4415, R.C.M. 1921; re-en. Sec. 4415, R.C.M. 1935; Sec. 16-608 R.C.M. 1947; (3)En. Sec. 2, Ch. 20, L. 1907; Sec. 2868, Rev. C. 1907; re-en. Sec. 4416, R.C.M. 1921; re-en. Sec. 4416, R.C.M. 1935; Sec. 16-609, R.C.M. 1947; R.C.M. 1947, 16-608, 16-609.

7-2-2412. Fees for transfer of court records. (1) The clerk of the district court wherein such action or proceeding was originally begun shall be entitled to receive, for transferring such files and papers and certified copies of the minutes and records entered in connection with such action or proceeding, no other fee than the rate of 20 cents per folio for copies of minutes made by him and 50 cents for certificate fee.

(2) The clerk of the district court of the new county to which such files and papers may be transferred in accordance with the provisions of 7-2-2411 shall not be entitled to any fees for the filing of such transferred records, but for the filing of any papers that may be filed thereafter in connection with such action or proceeding or for the issuance of any writs or other papers, such clerk shall be entitled to charge the same fees as now provided by law.

History: En. Sec. 3, Ch. 20, L. 1907; Sec. 2869, Rev. C. 1907; re-en. Sec. 4417, R.C.M. 1921; re-en. Sec. 4417, R.C.M. 1935; R.C.M. 1947, 16-610.

7-2-2413 through 7-2-2420 reserved.

7-2-2421. Preparation of jury list for new county. Whenever a new county has been created out of territory formerly embraced in any existing county or counties of the state, the jury list for such new county for the current year and until the regular jury commission for such new county shall certify the new jury list for the succeeding year, in accordance with the provisions of Title 3, chapter 15, part 4 shall be as follows.

History: En. Sec. 1, Ch. 129, L. 1919; re-en. Sec. 4422, R.C.M. 1921; re-en. Sec. 4422, R.C.M. 1935; R.C.M. 1947, 16-622.

7-2-2422. Certification of list of names. (1) The clerk of court of the county from which said new county may be segregated or, in the event of such new county being segregated from two or more counties, the clerks of court of each of such counties shall take the names of such persons as appear upon the jury list for such year, which may have been certified to him or to them by the jury commission or commissions of his or their respective county or counties to be residents of the territory embraced in such new county, and shall certify the same to the clerk of court of the new county.

(2) Such names shall then constitute the jury list for such new county for the period as aforesaid.

(3) Such new list shall be made and certified by such clerk or clerks of the existing county or counties as soon after the creation of such new county as may be practicable and in any event within 5 days after request therefor shall be made by the clerk of the district court of the new county.

History: (1), (2)En. Sec. 2, Ch. 129, L. 1919; re-en. Sec. 4423, R.C.M. 1921; re-en. Sec. 4423, R.C.M. 1935; Sec. 16-623, R.C.M. 1947; (3)En. Sec. 3, Ch. 129, L. 1919; re-en. Sec. 4424, R.C.M. 1921; re-en. Sec. 4424, R.C.M. 1935; Sec. 16-624, R.C.M. 1947; R.C.M. 1947, 16-623, 16-624.

7-2-2423. Correction of jury lists for old counties. The clerk or clerks of the district court of the county or counties from which such new county has been created shall, after the creation of such new county, remove from the list of jurors and jury boxes of his or their county or counties the names of all persons upon the list which may have been filed with him or them by the jury commission who may appear to him or them to be residents of the new county and so certified by him as aforesaid.

History: En. Sec. 4, Ch. 129, L. 1919; re-en. Sec. 4425, R.C.M. 1921; re-en. Sec. 4425, R.C.M. 1935; R.C.M. 1947, 16-625.

7-2-2424. Role of clerk of court in new county. The clerk of court of the new county shall then file and prepare his jury list and boxes in accordance with the general law pertaining to the duties of clerks of court with relation to jury lists and boxes.

History: En. Sec. 5, Ch. 129, L. 1919; re-en. Sec. 4426, R.C.M. 1921; re-en. Sec. 4426, R.C.M. 1935; R.C.M. 1947, 16-626.

Part 25

Change of Name of County

7-2-2501. Authorization to change name of county. The name, designation, appellation, cognomen, or title of any county in this state may be changed to any other name, designation, appellation, cognomen, or title as provided in this part.

History: En. Sec. 1, Ch. 113, L. 1917; re-en. Sec. 4427, R.C.M. 1921; re-en. Sec. 4427, R.C.M. 1935; R.C.M. 1947, 16-701.

7-2-2502. Petition to change county name. (1) Petitions for change of names must be heard and determined by the district court of the county whose name is sought to be changed.

(2) A petition for the change of the name, designation, appellation, cognomen, or title of any county in this state must be signed by a number of the legal voters who are taxpayers in such county equal, at least, to 25% of the whole number of votes cast for the office of governor of Montana in such county at the gubernatorial election next preceding the circulation of such petition. The signatures, in each instance, must be the genuine personal signature of the voter attaching his name to the petition. The petition must specify the present name of the county, the name proposed, and the reason

or reasons for such change of name and must be entitled in and addressed to the appropriate district court.

History: (1)En. Sec. 2, Ch. 113, L. 1917; re-en. Sec. 4428, R.C.M. 1921; re-en. Sec. 4428, R.C.M. 1935; Sec. 16-702, R.C.M. 1947; (2)En. Sec. 3, Ch. 113, L. 1917; re-en. Sec. 4429, R.C.M. 1921; re-en. Sec. 4429, R.C.M. 1935; Sec. 16-703, R.C.M. 1947; R.C.M. 1947, 16-702, 16-703.

7-2-2503. Form of petition. (1) The following shall be substantially the form of petition for any change of name of a county as provided in this part:

In the district court of the .... judicial district of the state of Montana, in and for the county of .....

Petition for the change of the
name of .... County

To the honorable district court of the .... judicial district of the state of Montana, in and for the county of .....

We, the undersigned legal voters of the county of ...., state of Montana, respectfully petition the honorable district court aforesaid that the name of .... County, Montana, be changed to the name of .... County, Montana.

The reasons for the proposed change of name as aforesaid are as follows (here set out reasons):

We further petition this honorable court to appoint a time for the hearing of this petition and of such objections thereto as may be filed before such date.

Each voter whose signature is hereby affixed hereby certifies that he has personally signed this petition and that the residence, post-office address, and voting precinct of such signer are correctly written after his signature appearing hereon.

Name	Residence	P.O. Address	Voting Precinct
....	....	....	....

Numbered lines for names.

(2) Every such sheet for petitioner's signature shall be attached to a full and correct copy of the petition, and such petition may be filed with the clerk of the district court aforesaid in sections for convenience in handling.

History: En. Sec. 4, Ch. 113, L. 1917; re-en. Sec. 4430, R.C.M. 1921; re-en. Sec. 4430, R.C.M. 1935; R.C.M. 1947, 16-704.

7-2-2504. Verification of petition signatures — county clerk's certification. (1) The county clerk of the county in which said petition shall be signed shall compare the signatures of the voters signing the same with their signatures on the registration books and blanks on file in his office for the preceding general election. The county clerk shall not retain in his possession any such petition or any part thereof for a longer period than 2 days for the first 200 signatures thereon and 1 additional day for each 200 additional signatures or fraction thereof on the sheets presented to him. At the expiration of such time, he shall file the same with the clerk of the aforesaid district court, with his certificate attached thereto as provided in subsection (2).

(2) After comparing the signatures, the county clerk shall attach to the sheets of said petition containing such signatures, his certificate to the aforesaid district court, substantially as follows:

State of Montana, County of ....

To the honorable district court of the .... judicial district of the state of Montana, in and for the county of .....

I, ..., county clerk of the county of ...., hereby certify that I have compared the signatures on (number of sheets) of the petition for change of name attached hereto with the signatures of said voters as they appear on the registration books and blanks in my office; and I believe that the signatures of (names of signers), numbering (number of genuine signatures), are genuine. I further certify that the number of genuine signatures hereto attached equals at least 25% of the whole number of votes cast for the office of governor of Montana in said county at the gubernatorial election next preceding the circulation of this petition.

...., County Clerk
(Seal) By ....
Deputy ....

(3) The forms herein given are not mandatory, and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors.

History: En. Sec. 5, Ch. 113, L. 1917; re-en. Sec. 4431, R.C.M. 1921; re-en. Sec. 4431, R.C.M. 1935; R.C.M. 1947, 16-705.

7-2-2505. Publication and posting of copies of petition. Upon the filing of the petition as aforesaid, the clerk of the district court, upon the receipt of the cost from any voter in the county, shall cause a copy of the same to be published for 4 successive weeks in some newspaper published in the county, and a copy of such petition must be posted at three of the most public places in the county for a like period by the clerk of the district court. Proofs must be made of such publication and posting before the petition can be considered and before a date for the hearing thereon may be fixed by the court.

History: En. Sec. 6, Ch. 113, L. 1917; re-en. Sec. 4432, R.C.M. 1921; re-en. Sec. 4432, R.C.M. 1935; R.C.M. 1947, 16-706.

7-2-2506. Court hearing on petition — court order. Such petition must be heard at such time as the court or judge may appoint, subject to the provisions of 7-2-2505. Objections may be filed in the office of the clerk of said court at any time before such date by any person who can, in such objections, show to the court or judge good reason against such change of name. On the hearing, the court or judge may examine on oath any of the petitioners, remonstrants, or other persons touching the petition and may make an order changing the name if there appears any reason, benefit, or advantage for such change or may dismiss the petition as to the court or judge may seem right or proper.

History: En. Sec. 7, Ch. 113, L. 1917; re-en. Sec. 4433, R.C.M. 1921; re-en. Sec. 4433, R.C.M. 1935; R.C.M. 1947, 16-707.

7-2-2507. Transmittal to secretary of state of order to change name. (1) Immediately upon the rendition of any decree changing the name of a county as provided in this part, the clerk of the district court of said county shall transmit, by registered or certified mail, a certified copy of said decree, showing the date of its rendition, to the secretary of state of Montana.

(2) The secretary of state shall file the same and record the same in an appropriate book.

History: **En. Sec. 8, Ch. 113, L. 1917; re-en. Sec. 4434, R.C.M. 1921; re-en. Sec. 4434, R.C.M. 1935; R.C.M. 1947, 16-708.**

7-2-2508. Procedure to effectuate name change in records and other papers. (1) From and after the rendition of the decree, the official records in the custody of the several county officers shall be styled and designated, as in each instance may be proper, with the new name of the county as provided by the decree. All printed blanks and forms, all printed matter whatsoever, and all written records of such county shall be styled and designated with the new name. All the official records, blanks, forms, books, and papers belonging to such county before the entry of such decree shall be styled and designated with the new name as provided in the decree.

(2) For the convenience of searchers of public records and in order to prevent confusion with respect to land titles or in any other respect, it shall be proper to style, designate, or refer to such records, books, papers, blanks, and forms as were in existence before the rendition of such decree in the following manner:

New Name (Formerly) Old Name of County

……

History: **En. Sec. 9, Ch. 113, L. 1917; re-en. Sec. 4435, R.C.M. 1921; re-en. Sec. 4435, R.C.M. 1935; R.C.M. 1947, 16-709.**

7-2-2509. Effect of name change on property and legal rights. (1) All public records and property of the county existing under the former name shall be and become the public records and property of the county of the new name. In all conveyances, indentures, instruments, decrees of courts, and other records where the former name of the county occurs, said former name shall thereafter be construed to mean the new name of the county.

(2) All writs and processes in force and existence under the former name of the county shall thereafter be the writs and processes of and appertaining to the county under its new name. All bonds, undertakings, and sureties, alive and in existence and running to or standing in the former name of the county, shall have the same force, effect, and relation to the county under its new name as they had to the county under its former name. All suits, actions, and proceedings in law or equity pending in the district court of the county under its former name or in any of the other courts of said county shall continue in full force and be in existence in the court in which they were pending under the new name of the county and shall not be in anywise abated or affected by the change of name.

History: **En. Sec. 10, Ch. 113, L. 1917; re-en. Sec. 4436, R.C.M. 1921; re-en. Sec. 4436, R.C.M. 1935; R.C.M. 1947, 16-710.**

7-2-2510. Effect of name change on vested rights and existing laws. (1) The change of name provided for in this part shall not impair or work a forfeiture or alteration of any vested rights.

(2) All laws of a general or special nature applicable to the county under its former name shall thereafter apply with equal force and effect to the county under its new name.

History: En. Sec. 11, Ch. 113, L. 1917; re-en. Sec. 4437, R.C.M. 1921; re-en. Sec. 4437, R.C.M. 1935; R.C.M. 1947, 16-711.

7-2-2511. Effect of name change on indebtedness, obligations, and contracts. (1) All indebtedness and obligations of the county, whether bonded or otherwise, shall be assumed by and become the indebtedness of the county under its new name. All bonds issued by the county under its former name, outstanding and unpaid at the time of the rendition of the decree, shall be assumed by and become due from and paid by the county under its new name.

(2) All contracts and obligations, express or implied, unfulfilled by the county at the date of the rendition of the decree shall be assumed and discharged by the county under its new name.

History: En. Sec. 12, Ch. 113, L. 1917; re-en. Sec. 4438, R.C.M. 1921; re-en. Sec. 4438, R.C.M. 1935; R.C.M. 1947, 16-712; amd. Sec. 12, Ch. 250, L. 1979.

7-2-2512. Effect of name change on district court. The terms of the district court in and for said county, as theretofore established by the court or a judge thereof under the former name of the county, shall become the terms of said court for the county under its new name and shall be held as stated, in and for said county under its former name.

History: En. Sec. 13, Ch. 113, L. 1917; re-en. Sec. 4439, R.C.M. 1921; re-en. Sec. 4439, R.C.M. 1935; R.C.M. 1947, 16-713.

7-2-2513. Effect of name change on officers. Persons who are, at the date of the rendition of the decree, the county, township, and district officers or officials and members of the legislature of the county under its former name shall remain in office and shall thereafter be the county, township, district, and legislative officials of the county under its new name and, as such, shall be entitled to the same salaries or compensation during the remainder of their terms of office that they were entitled to receive from the county under its former name.

History: En. Sec. 14, Ch. 113, L. 1917; re-en. Sec. 4440, R.C.M. 1921; re-en. Sec. 4440, R.C.M. 1935; R.C.M. 1947, 16-714(part).

7-2-2514. Effect of name change on county boundaries. No change of name shall be so construed as to alter or modify the boundaries of the county as the same existed and were established under the former name of the county, but such boundaries shall be and remain the same until changed according to law.

History: En. Sec. 14, Ch. 113, L. 1917; re-en. Sec. 4440, R.C.M. 1921; re-en. Sec. 4440, R.C.M. 1935; R.C.M. 1947, 16-714(part).

Part 26

Removal of County Seat

7-2-2601. Petition to remove county seat. (1) Whenever the inhabitants of any county of this state desire to remove the county seat of a county from the place where it is fixed by law or otherwise to another place, they may present a petition to the board of county commissioners of their county, praying such removal, such place to be named in the petition, and that an election be held to determine whether or not such removal must be made.

(2) The petition to remove the county seat of the county from the place where it is fixed by law to another place must be presented at least 60 days prior to any action thereon being taken by the board of county commissioners. Action on said petition by the board must be had at a regular meeting of said board.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part).

7-2-2602. Filing of petition — notice and hearing. (1) A petition for removal of a county seat must be filed with the county clerk.

(2) The county clerk, immediately upon the filing of said petition, must cause to be printed in every newspaper published within said county a notice to the effect that a petition praying for the removal of said county seat has been filed with the county clerk, that said petition is open to the inspection of any and all persons interested therein, and that said petition will be presented to the board of county commissioners at its next regular session for action thereon.

(3) No other or additional petition than the one originally filed shall be considered by the board.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part).

7-2-2603. Withdrawal of name from petition. At any time on or before the date fixed for the hearing, any person having signed the original petition for the removal of the county seat may file a statement in writing with the county clerk that he desires to have his name withdrawn from such petition, provided that not more than one withdrawal shall be permitted by the same person.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part).

7-2-2604. Consideration of petition — submission to voters. (1) For the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the pollbooks in the county clerk's office constituting the returns of the last general election held in their county for the purpose of ascertaining whether such petition bears the names of at least 50% of the voters listed therein.

(2) If the petition is signed by at least 50% of the qualified electors of such county, the board of county commissioners must at the next general election submit the question of removal to the electors of the county.

(3) If such petition then shows that it has not been signed by at least 50% of the voters of the county, after deducting from the original petition the names of all persons who may have signed such original petition and who may have filed or caused to be filed with the county clerk of said county or

the board, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient and the question of the removal of the county seat shall not be submitted.

History: En. Sec. 4158, Pol. C. 1895; amd. Sec. 2, p. 146, L. 1901; re-en. Sec. 2852, Rev. C. 1907; amd. Sec. 2, Ch. 10, L. 1919; re-en. Sec. 4370, R.C.M. 1921; Cal. Pol. C. Sec. 3977; re-en. Sec. 4370, R.C.M. 1935; amd. Sec. 1, Ch. 406, L. 1973; R.C.M. 1947, 16-302.

7-2-2605. Notice and conduct of election. (1) Notice of such election, clearly stating the object, must be given and the election must be held and conducted and the returns made in all respects in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law.

(2) In voting on the question, each elector must vote for the place in the county which he prefers by placing the mark X opposite the name of the place.

History: (1)En. Sec. 4159, Pol. C. 1895; re-en. Sec. 2853, Rev. C. 1907; re-en. Sec. 4371, R.C.M. 1921; Cal. Pol. C. Sec. 3979; re-en. Sec. 4371, R.C.M. 1935; Sec. 16-303, R.C.M. 1947; (2)En. Sec. 4160, Pol. C. 1895; re-en. Sec. 2854, Rev. C. 1907; re-en. Sec. 4372, R.C.M. 1921; Cal. Pol. C. Sec. 3980; re-en. Sec. 4372, R.C.M. 1935; Sec. 16-304, R.C.M. 1947; R.C.M. 1947, 16-303, 16-304.

7-2-2606. Determination and publication of election results. (1) When the returns have been received and compared and the results ascertained by the board, if a majority of the qualified electors voting on the question have voted in favor of any particular place, the board must give notice of the results by posting notices thereof in all the election precincts of the county and by publishing a like notice in a newspaper printed in the county at least once a week for 4 weeks.

(2) In the notice provided for in this section, the place selected to be the county seat of the county must be so declared from a day specified in the notice, not more than 90 days after the election. After the day named in the notice, the place chosen is the county seat of the county.

History: (1)En. Sec. 3, p. 146, L. 1901; re-en. Sec. 2855, Rev. C. 1907; amd. Sec. 1, Ch. 27, L. 1921; re-en. Sec. 4373, R.C.M. 1921; Cal. Pol. C. Sec. 3981; re-en. Sec. 4373, R.C.M. 1935; amd. Sec. 2, Ch. 406, L. 1973; Sec. 16-305, R.C.M. 1947; (2)En. Sec. 4162, Pol. C. 1895; re-en. Sec. 2856, Rev. C. 1907; re-en. Sec. 4374, R.C.M. 1921; Cal. Pol. C. Sec. 3982, re-en. Sec. 4374, R.C.M. 1935; Sec. 16-306, R.C.M. 1947; R.C.M. 1947, 16-305, 16-306.

7-2-2607. Transmittal of election results. Whenever any election has been held as provided for in this part, the statement made by the board of county commissioners showing the result thereof must be deposited in the office of the county clerk. Whenever the board gives the notice prescribed by 7-2-2606(2), they must transmit a certified copy thereof to the secretary of state.

History: En. Sec. 4163, Pol. C. 1895; re-en. Sec. 2857, Rev. C. 1907; re-en. Sec. 4375, R.C.M. 1921; Cal. Pol. C. Sec. 3983; re-en. Sec. 4375, R.C.M. 1935; R.C.M. 1947, 16-307.

7-2-2608. Frequency of elections on question of moving county seat. (1) When an election has been held and a majority of the votes are not cast for some place other than that fixed by law as the existing county seat, no second election for the removal thereof may be held within 4 years thereafter.

(2) When the county seat of a county has been once removed by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this part.

History: (1)En. Sec. 4164, Pol. C. 1895; re-en. Sec. 2858, Rev. C. 1907; re-en. Sec. 4376, R.C.M. 1921; Cal. Pol. C. Sec. 3984; re-en. Sec. 4376, R.C.M. 1935; Sec. 16-308, R.C.M. 1947; (2)En. Sec. 4, Ch. 146, L. 1901; re-en. Sec. 2859, Rev. C. 1907; re-en. Sec. 4377, R.C.M. 1921; Cal. Pol. C. Sec. 3985; re-en. Sec. 4377, R.C.M. 1935; Sec. 16-309, R.C.M. 1947; R.C.M. 1947, 16-308, 16-309; amd. Sec. 13, Ch. 250, L. 1979.

Part 27

Abandonment and Consolidation of Counties

7-2-2701. Abandonment and consolidation of counties. The organization and corporate existence of any county organized under the laws of this state may be abandoned and abolished and the territory within its boundaries may be attached to and made a part of some adjoining county in the manner provided by this part.

History: En. Sec. 1, Ch. 105, L. 1937; R.C.M. 1947, 16-4001.

7-2-2702. Petition for abandonment of county. (1) A petition may be filed with the county clerk of a county asking that the question of abandoning and abolishing the organization and corporate existence of the county and attaching its territory to and making the same a part of some adjoining county be submitted to the qualified electors of the county at an election. The petition shall state the name of the adjoining county to which the territory of the county to be abandoned and abolished shall be attached and made a part.

(2) The petition shall be signed by not less than 35% of the qualified electors of the county whose names appear upon the registration records of such county, shall contain the post-office address and voting precinct of each individual signing it, and shall state the name and address of three individuals to whom notice of the insufficiency of the petition shall be sent in the event that the petition does not have the required number of signatures of registered electors signed thereto. No person, after signing any such petition, shall be allowed or permitted to withdraw his signature or name therefrom.

History: En. Sec. 2, Ch. 105, L. 1937; R.C.M. 1947, 16-4002(part); amd. Sec. 280, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-2-2703. Processing of petition — certification to county commissioners. (1) It shall be the duty of the election administrator, within 30 days after the filing of the petition, to examine it and to ascertain and determine from the registration records of the county whether the petition is signed by the required number of registered electors. The election administrator may be authorized by the board of county commissioners to employ additional help in his office to assist him in the work of examining the petition, and the board shall provide for their compensation.

(2) When the examination is completed, the election administrator shall forthwith attach to the petition his certificate, properly dated and signed, showing the result of his examination. If the certificate shows that the petition is signed by the required number of registered electors, the election administrator shall immediately present the petition to the board if the board is then in session; otherwise, at its first regular meeting after the date of the certificate.

History: **En. Sec. 2, Ch. 105, L. 1937; R.C.M. 1947, 16-4002(part); amd. Sec. 281, Ch. 571, L. 1979.**

7-2-2704. Hearing on petition by county commissioners — notice. (1) Whenever any such petition is presented to the board of county commissioners of a county with a certificate of the election administrator attached thereto and showing that the petition has been signed by not less than 35% of the registered electors of the county whose names appear upon the registration records of the county, as provided in 7-2-2702 and 7-2-2703, the board shall, immediately upon presentation of the petition, make and enter an order in its minutes fixing a day for considering and taking final action on the petition. The date for final action shall be not less than 30 or more than 35 days after the date when the order is made.

(2) The board shall cause a notice to be published in the official newspaper of the county to the effect that the petition has been presented to the board asking for the abandonment and abolishment of the county and that the board will meet at the time specified in the order for considering and taking final action on the petition, at which time any registered electors of the county interested therein may appear and be heard thereon. The notice shall be published once a week for 2 successive weeks immediately following the making of the order.

History: **En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(1); amd. Sec. 282, Ch. 571, L. 1979.**

7-2-2705. Petition to amend proposed consolidation. (1) At any time prior to 5 days before the date fixed for consideration and final action on such petition, 50% of the registered electors residing within a particular part or portion of such county may file with the county clerk of such county a petition in writing, signed by them, praying that the part or portion of such county within which such petitioners reside shall not be attached to the county designated in the petition for abandonment but shall be attached to some other adjoining county. No person, after signing any such petition, shall be allowed or permitted to withdraw his signature or name therefrom.

(2) The petition authorized by subsection (1) shall definitely, particularly, and accurately describe the boundaries of such part or portion of said county which said petitioners desire to be attached to such other adjoining county and shall specify and name such other adjoining county to which such part or portion is to be attached if said county is abandoned and abolished.

(3) Separate and independent petitions may be filed by registered electors residing within the boundaries of separate and distinct and different parts or portions of such county, praying that, if said county is abandoned, the territory embraced within the boundaries described therein may be attached to and become parts of the same or different adjoining counties other than the county named and designated in the petition for abandonment.

History: **En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(part).**

7-2-2706. Processing of petition to amend proposed consolidation — certification to county commissioners. Whenever any petition is filed under 7-2-2705, the election administrator shall immediately examine the same and determine from the registration records of the county whether the petition has been signed by the required number of registered electors and shall attach thereto his certificate showing the total number of registered electors residing within the boundaries described in the petition and the number thereof whose names appear on said petition and shall deliver the petition, with the certificate attached, to the board of county commissioners when the board meets to consider and take final action on the petition for abandonment.

History: En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(part); amd. Sec. 283, Ch. 571, L. 1979.

7-2-2707. Action on petitions — resolution. (1) On the day fixed by the board for consideration and final action on such petition for abandonment, the board shall meet and examine and consider all petitions which may have been filed praying that particular parts or portions of said county, if abandoned, be attached to an adjoining county or counties other than the county named in such petition for abandonment and shall determine the sufficiency of each such petition filed and shall enter its findings with regard thereto in its minutes. Said board shall thereupon adopt a resolution, which shall be in writing and also entered in full in its minutes.

(2) Said resolution must be signed by the members of the board, and the county clerk must, within 5 days thereafter, make the certified copies of said resolution, with copy of petition or petitions attached, and transmit one copy to the governor of Montana and one copy to the county clerk of each county to which any part or portion of said county is to be attached if abandoned.

History: En. Sec. 4, Ch. 105, L. 1937; R.C.M. 1947, 16-4004(part).

7-2-2708. Form of resolution. The resolution authorized by 7-2-2707 shall be in substantially the following form:

Whereas, there has been filed with the election administrator of (name) county, Montana, a petition asking that the organization and corporate existence of the county be abandoned and abolished and its territory attached to and made a part of an adjoining county, the county of (name), Montana; and

Whereas, the petition has been presented to the board of county commissioners of (name) County, with a certificate of the election administrator of the county attached thereto showing that the petition has been signed by not less than 35% of the registered electors of the county; and

(If a petition for attaching any part or portion of the county, in case of abandonment, to an adjoining county or counties other than the county named in the petition for abandonment and found to have been signed by the required number of registered electors, insert the following for each petition):

Whereas, there has been filed a petition signed by not less than 50% of the registered electors residing within that part or portion of the county described as (give description as contained in petition), praying that the part or portion of the county within the boundaries be attached to and made a part of the county of (name of county given in petition) if the county is abandoned.

Now, therefore, be it resolved that if (name) County shall be abandoned and abolished, the territory embraced within its boundaries shall be attached to and become part of the following: (if all to be attached to one adjoining county so state, but if parts or portions to any other county or counties, then describe the part or portion to go to each adjoining county as well as to the county named in the petition for abandonment).

Be it further resolved that the county clerk of (name) County, Montana, make copies of this resolution, each with a copy of said petition for abandonment with the signatures omitted therefrom (and copies of petitions for attaching parts or portions of said county to adjoining county or counties other than the county named in the petition for abandonment, if any were filed and found sufficient, with signatures omitted), and certify to the same and affix the seal of the county thereto and transmit one of the copies to the governor of Montana and one of the copies to the clerk of each county to which any part of the county is to be attached if abandoned.

History: En. Sec. 4, Ch. 105, L. 1937; R.C.M. 1947, 16-4004(part); amd. Sec. 284, Ch. 571, L. 1979.

7-2-2709. Special election on question of abandonment and consolidation. (1) (a) Upon receipt of a certified copy of the resolution provided for in 7-2-2707, the governor shall, within 10 days thereafter, issue his proclamation calling a special election in the county in which the petition referred to in the resolution was filed and in each county designated in the resolution as a county to which any of the territory of the county, if abandoned and abolished, shall be attached and made a part.

(b) The proclamation shall fix a day for holding the election in such counties, which shall be not less than 90 days or more than 120 days after the date of the governor's proclamation calling the same, provided that if a general election will be held in the counties not less than 90 days or more than 120 days after the date of such proclamation, the governor, in the proclamation, shall direct that the question be submitted to the registered electors of the counties at the general election. The proclamation shall be filed in the office of the secretary of state, and copies thereof shall be transmitted by the governor to the election administrator of each of the counties in which the election is to be held.

(2) At the election there shall be submitted:

(a) to the registered electors of the county in which the petition was filed, the question of whether or not the county shall be abandoned and abolished and its territory attached to and made a part of the county designated and named for the purpose in the petition; and

(b) to the registered electors of each county named and designated in the resolution as a county to which a part of the territory of the county proposed to be abandoned and abolished shall be attached and made a part if the county shall be so abandoned and abolished, the question of whether or not the part of the territory of the county, if abandoned and abolished, described in the resolution shall be attached to and become a part of the county.

History: En. Sec. 5, Ch. 105, L. 1937; R.C.M. 1947, 16-4005; amd. Sec. 285, Ch. 571, L. 1979.

7-2-2710. Procedure to hold election. (1) The election administrator of each of the counties, after receiving a copy of the election proclamation, shall present it to the board of county commissioners if the board is then in session or, if not in session, then at the first meeting held thereafter. The board of county commissioners of each of the counties shall issue the proclamations and give the notices of election which are required by the general laws of this state when questions are to be submitted to the qualified electors of a county at an election. The proclamation and notices shall include a description of the boundaries of that part of the county proposed to be abandoned and attached to and made a part of such county if the county is abandoned.

(2) The election administrator of each of the counties shall give notice of the closing of the registration books and shall cause the same to be closed at the time and in the manner provided by the general registration and election laws of this state.

(3) The election shall be held, voted, counted, and returns made and canvassed in the manner provided by the general election laws of this state.

History: En. Secs. 6, 7, Ch. 105, L. 1937; R.C.M. 1947, 16-4006, 16-4007(part); amd. Sec. 286, Ch. 571, L. 1979.

7-2-2711. Form of ballot. (1) At such election the question to be submitted to the qualified electors of the county in which said petition was filed shall be as follows:

☐ FOR the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

☐ AGAINST the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

(2) The question to be submitted to the qualified electors of the counties designated in the resolution as the county or counties to which the territory of the county proposed to be abandoned and abolished is to be attached and made a part shall be as follows:

☐ FOR attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

☐ AGAINST attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

History: En. Sec. 7, Ch. 105, L. 1937; R.C.M. 1947, 16-4007(part).

7-2-2712. Canvass of returns — proclamation of results. (1) The board of county commissioners of each county, acting as a canvassing board, must, within 10 days after the holding of the election, canvass the returns of the election. Within 5 days thereafter, the election administrator of each county must make and enter in the records of the board a statement of the vote in the county and transmit to the secretary of state, by registered or certified mail, an abstract thereof, which shall be marked "election returns".

(2) Within 10 days after receiving the abstracts from all counties in which the election was held and on notice from the secretary of state, the board of

state canvassers shall meet and canvass, compute, and determine the vote. The secretary of state, as secretary of the board, must make and file in his office a statement of it and transmit a copy thereof to the governor.

(3) Upon receipt of the copy, the governor shall issue a proclamation declaring the result of the election and shall file a copy of the proclamation in the office of the secretary of state and transmit a copy of the proclamation to the county clerk of each of the counties in which such election was held. Each county clerk shall file the same in his office and present the same to the board of county commissioners of his county if the board is then in session; otherwise, at the first meeting of the board after the copy has been received by the clerk.

History: En. Sec. 8, Ch. 105, L. 1937; R.C.M. 1947, 16-4008; amd. Sec. 287, Ch. 571, L. 1979.

7-2-2713. Effect of election results. (1) If at the election a majority of the votes cast in the county in which the petition for abandonment was filed are cast in favor of the abandonment and abolishment of the county and if a majority of the votes in the county designated in the petition as the county to which the territory of the abandoned county shall be attached are cast in favor of attachment, then:

(a) (i) the organization and the political and corporate existence of the county in which the petition for abandonment was filed terminate;

(ii) the county is abandoned, abolished, and disincorporated and ceases to exist; and

(iii) except as provided in subsection (2) of this section, its territory is attached to and becomes a part of the counties designated in the resolution adopted under 7-2-2707; and

(b) the terms of office of each of the officers of the abandoned county and of the members of the board of county commissioners thereof terminate at midnight on the following June 30.

(2) If at the election a majority of the votes in any adjoining county named in the resolution adopted under 7-2-2707, other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county shall attach, are cast against the attaching of any portion of the territory of the abandoned county to such adjoining county, then such portion of the territory described in the resolution attaches and becomes a part of the county designated in the petition for abandonment as the county to which the territory of the abandoned county attaches.

History: En. Sec. 9, Ch. 105, L. 1937; R.C.M. 1947, 16-4009; amd. Sec. 14, Ch. 250, L. 1979.

7-2-2714 through 7-2-2720 reserved.

7-2-2721. Disposition of townships. The townships of a county abandoned and abolished under this part shall be townships of the county to which the territory within such townships is attached until such time as they may be changed by the board of county commissioners of such county. If a township of such abandoned county is divided and a part attached to one and a part attached to another adjoining county, then the board of county commissioners of the county to which attached, until further order of such board, shall attach such territory to an adjoining township within such county.

History: En. Sec. 10, Ch. 105, L. 1937; amd. Sec. 6, Ch. 253, L. 1975; R.C.M. 1947, 16-4010.

7-2-2722. Disposition of property. Each county to which any part of the territory of an abandoned county is attached and made a part shall:

(1) succeed to, have, possess, and own all real estate, all improvements thereon, all tangible property, and all county highways situated within the territory of the abandoned county attached to such county and all certificates of tax sale to lands and improvements thereon situated within such territory; and

(2) have the same right and power to sell and assign such certificates and to apply for and obtain tax deeds to such lands and improvements and to sell and dispose of the same as were or would have been possessed by the abandoned county if it had not been abandoned.

History: En. Sec. 11, Ch. 105, L. 1937; R.C.M. 1947, 16-4011.

7-2-2723. Vesting of property and legal rights. The county designated in the petition for the abandonment of a county as the county to which the territory of the abandoned county shall be attached, subject to the provisions of this part, shall:

(1) succeed to, have, possess, and own all other property, assets, liens, rights, remedies, and claims of every kind owned and belonging to or possessed by the abandoned county on the date when the same ceases to exist; and

(2) have the right to demand, collect, and receive any and all money to which such abandoned county was entitled for taxes for which tax sales had not been held, for licenses, and for other demands remaining unpaid on the date when such abandoned county ceases to exist and to enforce in any manner authorized by law any and all of such rights, remedies, and claims.

History: En. Sec. 12, Ch. 105, L. 1937; R.C.M. 1947, 16-4012.

7-2-2724. Disposition of records and other papers. (1) All maps, plats, papers, documents, records, record books, indexes, and files of every kind and description belonging to an abandoned and abolished county or in the possession of any of the officers thereof on the date when such county ceases to exist shall be, immediately after such county ceases to exist, removed to the county seat of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached. The same shall be delivered over to the custody of the proper officers of such county and be placed in the proper offices thereof and shall thereafter constitute the maps, plats, papers, documents, records, record books, indexes, and files of such county. The cost and expense of such transfer and removal shall be paid by warrants ordered drawn and issued by the board of county commissioners of such county against the general fund of such abandoned and abolished county.

(2) (a) If any part of an abandoned county shall be attached to and become a part of any adjoining county other than the county designated in the petition for abandonment, it shall be the duty of the board of county commissioners of the county designated in said petition for abandonment:

(i) to enter into a contract with some competent person or persons for transcribing so much of the records of said abandoned county as affects or relates to the property in that portion of the abandoned county which has been attached to such other county;

(ii) to prepare complete and proper indexes for such transcribed records; and

(iii) to transmit such transcribed records and indexes, when completed, to such other county.

(b) If portions of such abandoned county have been attached to more than one adjoining county, the board of county commissioners may enter into separate contracts for transcribing the records for each of such other counties or may enter into one contract for transcribing the records for all of such other counties.

(c) Chattel mortgages, mechanic's and other liens, and other instruments filed but not recorded shall not be transcribed, but the original instruments shall be transmitted to such other county or counties. The cost of transcribing, indexing, and transmitting such records shall be paid by warrants drawn by the board of county commissioners letting such contracts on the general fund of the abandoned county. All of the provisions of 7-2-2405 through 7-2-2407 shall apply to such transcribed records.

History: **En. Sec. 13, Ch. 105, L. 1937; R.C.M. 1947, 16-4013.**

7-2-2725. Status of continuing contracts. Except as provided in 7-2-2726, all valid and existing contracts entered into by a county abandoned and abolished under this part which, by the terms thereof, will extend beyond the time when such county ceases to exist shall continue in full force and effect as contracts of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached and made a part.

History: **En. Sec. 14, Ch. 105, L. 1937; R.C.M. 1947, 16-4014(part).**

7-2-2726. Status of printing contracts. (1) If the abandoned and abolished county has entered into a printing contract in accordance with the provisions of part 24 of chapter 5 and the contract is in full force and effect on the date when the county ceases to exist, the purchase of all supplies and printing for the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached shall be divided by the board of county commissioners of the continuing county between the contract of the abandoned county and any similar existing contract entered into by the board of the continuing county in such manner as the board considers equitable and just to the holders of both contracts until the expiration of the contract entered into by the abandoned and abolished county.

(2) When a petition is filed with the election administrator of a county for the abandonment and abolishment of the county in accordance with the provisions of 7-2-2702 and 7-2-2703, the board of county commissioners of the county may not thereafter enter into any contract under the provisions of part 24 of chapter 5 until the time has expired when the petition may be

presented to the board by the county clerk as provided in 7-2-2702 and 7-2-2703.

History: En. Sec. 14, Ch. 105, L. 1937; R.C.M. 1947, 16-4014(part); amd. Sec. 15, Ch. 250, L. 1979; amd. Sec. 288, Ch. 571, L. 1979.

7-2-2727. Effect of abandonment on school and special districts. (1) All school districts and other special districts of an abandoned and abolished county shall continue as and be such school districts and special districts of the county to which such territory is attached and becomes a part. The members of the boards of trustees or directors of such school districts or other special districts shall continue to be the trustees and directors thereof until the terms of office for which they were elected or appointed shall expire. If any of such school districts shall bear the same numbers as school districts of the county to which the territory within the boundaries of such abandoned and abolished county is attached and made a part, the county superintendent shall either renumber the school districts of said abandoned and abolished county or shall give them such designation in addition to their numbers as will distinguish them from the districts in the county to which such territory is attached and made a part. If the territory of any school district shall be divided and parts attached to two or more counties, such school district shall be a joint school district of such counties.

(2) All funds of all school districts and of all other special districts of an abandoned and abolished county shall be transferred to and paid over to the county treasurer of the county to which the territory of such school district is attached and becomes a part and shall be accounted for by said county treasurer as the funds of such districts. If a joint school district is created, the state superintendent of public instruction shall designate the county treasurer to whom such funds are to be transferred and paid over. All taxes levied for all school funds and funds of other special districts of such abandoned and abolished county remaining unpaid at the time said county ceased to exist and all other money which would have accrued to such funds if said county had not been abandoned and abolished, when received by such county treasurer, shall be deposited to the credit of the proper school or special district funds.

History: En. Sec. 22, Ch. 105, L. 1937; R.C.M. 1947, 16-4022.

7-2-2728. Effect of abandonment on county high schools. (1) If a county high school shall have been established in any abandoned and abolished county when such county ceases to exist, such county high school shall become the high school of the district in which it is situated or located and all property, both real and personal, owned by such county or acquired for and used in connection with the maintenance and operation of such county high school shall become and be the property of such school district to be used by such school district for the maintenance and operation of such district high school. All lawful existing contracts of such county high school shall be assumed by and become the contracts of such school district. The terms of office of all trustees of such county high school shall cease and terminate at the time the existence of said abandoned and abolished county shall cease and terminate.

(2) All money in all county high school funds shall be transferred and paid over to the treasurer of the county to which the territory in which the

school district succeeding to the property of the county high school is attached and made a part and used and applied as follows:

(a) Any money in any bond sinking and interest funds shall be used for the payment and interest on any unpaid and outstanding high school bonds.

(b) (i) If there shall be outstanding any high school warrants at the time such county high school ceases to exist, then all money in such county high school funds, except sinking and interest funds, shall be used for the payment of such warrants, with interest thereon.

(ii) If such money is insufficient to pay all outstanding warrants, with the interest thereon, then such warrant indebtedness shall be assumed by and become warrant indebtedness of such school district.

(c) If there be no such high school warrants outstanding, then the money in such funds shall be transferred to the high school fund of the school district which, under the provisions of this part, is to maintain such high school as a district high school.

(3) (a) All taxes levied for any sinking and interest fund for county high school bonds and remaining unpaid at the time the abandoned and abolished county ceases to exist, when collected, shall be deposited to the credit of such fund.

(b) All taxes levied for high school purposes and remaining unpaid when such county ceases to exist and all other money which would have gone to such high school if the county had not been abandoned and abolished, when collected, shall be deposited to the proper high school funds of the district in the county to which the territory of the abandoned and abolished county has been attached and made a part.

History: En. Sec. 23, Ch. 105, L. 1937; R.C.M. 1947, 16-4023.

7-2-2729. Tax liability of property within abandoned county for debts of continuing county. (1) Whenever a county is abandoned and abolished and its territory is attached to and made a part of an adjoining county under the provisions of this part, none of the property situated within the boundaries of such abandoned and abolished county shall be subjected to taxation or taxed for the payment of any indebtedness of such adjoining county which may exist at the time such territory is attached to and made a part of such adjoining county.

(2) If an adjoining county to which the territory of an abandoned and abolished county is attached and made a part shall have outstanding and unpaid bonds at the time such territory is attached to and made a part of such county, such bonds shall be the indebtedness of such adjoining county. None of the property situated within the territory of the abandoned county shall be subjected to any taxes to pay the principal or interest of such bonds, but such taxes shall be levied only against the property within the boundaries of such adjoining county as the same existed before the territory of the abandoned and abolished county was attached to and made a part thereof.

History: En. Sec. 18, Ch. 105, L. 1937; R.C.M. 1947, 16-4018(part).

7-2-2730. Establishment of special warrant district or special funding bond district in continuing county. (1) After all warrants have been drawn and issued against the funds of such adjoining county to pay the claims and demands existing against such county on the date when the territory of such abandoned and abolished county was attached to such adjoining county, all money in the funds of such adjoining county shall be used and applied in payment of the warrants drawn against its respective funds. If such money is not sufficient to pay all of such warrants, with the interest thereon, then the board of county commissioners shall make an order creating a special warrant district and shall include within such district all of the territory of such adjoining county but shall not include therein any of the territory of such abandoned and abolished county and shall, thereafter and at the time of making levies for county purposes, levy a special tax against all taxable property in such district to pay the warrants, with interest thereon, outstanding against the funds of said county. The board may in its discretion extend such tax levy over a period of not to exceed 3 years.

(2) (a) If it shall appear to the board that it will require too large a tax levy to pay such warrant indebtedness, with interest thereon, within 3 years, such board, instead of creating a special warrant district, shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory within such adjoining county but shall not include therein any of the territory of the abandoned and abolished county attached to such adjoining county. After all money in the several funds of said county applicable thereto has been applied in payment of such outstanding warrants and interest thereon and without submitting the question of doing so to an election, such board may issue bonds in an amount sufficient to pay and redeem all such warrants remaining outstanding, with interest thereon.

(b) Such bonds shall be issued in the name of said adjoining county and shall contain recitals to the effect that the principal and interest thereof will be paid by millage tax levies against the property situated within the boundaries of said county as the same existed before the territory of such abandoned and abolished county was attached thereto and that none of the property within the territory of such abandoned and abolished county will be subjected to such levies. Except as otherwise provided herein, said bonds shall be issued and sold and tax levies shall be fixed and made to pay the principal and interest thereof as the same becomes due in the manner provided by 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104 through 7-7-2106, and parts 22 and 23 of chapter 7 and all the provisions thereof, so far as applicable thereto, shall apply to such bonds.

History: En. Sec. 18, Ch. 105, L. 1937; R.C.M. 1947, 16-4018(a), (b).

7-2-2731 through 7-2-2740 reserved.

7-2-2741. Processing of claims against abandoned county. (1) All claims and demands against any abondoned and abolished county for salaries, services, wages, materials, and supplies; for all other current expenses; and for claims and demands accruing under contracts and for which said county was liable at the time it ceased to exist and which had not been approved and warrants issued therefor prior to the time it ceased to exist shall be presented to the board of county commissioners of the county designated in the petition for abandonment as the county to which its territory is attached and made a part. Except as provided in subsection (2), all such claims and demands shall be acted on by the board of such county, and warrants shall be issued in payment thereof in the same manner as though the same had been incurred by such county.

(2) All such warrants shall be drawn and issued against the proper funds of such abandoned and abolished county. No such claim or demand shall be approved or warrant issued in payment thereof if the amount of such claim or demand exceeds the unexpended balance of appropriation for such purpose contained in the budget of the abandoned and abolished county for the year in which the same was incurred.

History: En. Sec. 15, Ch. 105, L. 1937; R.C.M. 1947, 16-4015.

7-2-2742. Transfer and use of funds of abandoned county. (1) All money in each of the funds of an abandoned and abolished county shall be transferred to and paid over by the treasurer thereof to the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and become a part and shall be kept and maintained by such treasurer in separate funds in the name of such abandoned and abolished county and, except as provided in subsection (2), used and applied for paying warrants issued against such funds by the abandoned and abolished county prior to the time it ceased to exist and for paying warrants issued against such fund by the board of county commissioners of the county to which it is attached and becomes a part under the provisions of 7-2-2724 and 7-2-2741 and the interest on such warrants.

(2) Money in any bond sinking and interest funds of such abandoned and abolished county shall be used and applied for the sole purpose of paying the interest and principal becoming due on unpaid and outstanding bonds of such county.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2743. Collection of taxes and other money. Taxes levied for all such funds which were delinquent on the day when such county ceased to exist and for which tax sales had not been held and all licenses and other money owing to such county at such time shall be collected by the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and become a part and placed in and deposited to the credit of the funds of such abandoned and abolished county to which the same properly belong.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2744. Transfer of money when claims against fund satisfied. (1) When all warrants issued and outstanding against any fund of an abandoned and abolished county, with the interest thereon, have been fully paid, any balance standing to the credit of such fund shall be transferred to any other fund or funds of such county in which there is not sufficient money to pay the warrants issued and outstanding against the same, with interest thereon.

(2) If, after payment of all warrants issued against all such funds, balances remain in any thereof, the same shall be transferred to and become a part of the bond sinking and interest funds of such abandoned county.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2745. Procedure if insufficient funds — special warrant district or special funding bond district. (1) After all warrants have been drawn and issued against the funds of an abandoned and abolished county under the provisions of 7-2-2724 and 7-2-2741, if it shall appear to the satisfaction of the board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached and made a part that the money in the several funds of such abandoned and abolished county, together with all money which may be received for such funds from the payment and collection of delinquent taxes, unpaid licenses, and other sources owing to such abandoned and abolished county, will be insufficient to pay all outstanding and unpaid warrants issued and drawn against such funds, then the board of such county shall make an order creating a special warrant district and shall include within such district all of the territory embraced within the boundaries of the abandoned and abolished county at the time it ceased to exist.

(2) If it shall appear to the satisfaction of the board that a tax levy sufficient to pay such warrants and interest, when spread over a term of 3 years, will be too great a hardship on and too burdensome to the taxpayers owning property within the boundaries of such abandoned and abolished county, said board, instead of creating such special warrant district, shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory embraced within the boundaries of such abandoned and abolished district at the time it ceased to exist.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2746. Details relating to special warrant district. (1) The board of county commissioners creating a special warrant district shall, thereafter and at the time of making and fixing tax levies for county purposes, make and fix a levy against all taxable property within such special warrant district for the payment of said warrants and the interest thereon. The proceeds of such levy, when collected, shall be deposited by the county treasurer in a separate fund which shall be used for the payment of said warrants and interest and for no other purpose.

(2) Said tax levy need not be made at such a rate as will pay all of said warrants, with interest, in 1 year, but if said board shall deem it for the best interests of the taxpayers owning property within such special warrant district, such levy may be spread over a term of not more than 3 years.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2747. Details relating to special funding bond district. (1) The board of county commissioners and the county clerk of the county to which the territory of such abandoned and abolished county has been attached and made a part shall be, respectively, the board of trustees and the clerk of a special funding bond district created pursuant to 7-2-2745(2), and the county treasurer shall act as the treasurer thereof. The board of trustees shall adopt an appropriate seal for such district.

(2) (a) After such district has been created and established, the board of trustees shall direct the county treasurer to use and apply all money in the several funds of the abandoned and abolished county, except money in any

bond sinking and interest funds, to the payment of warrants issued and outstanding against such funds, with the interest thereon. Said board of trustees shall thereupon issue and sell bonds of such special funding bond district in an amount sufficient to pay all warrants against such funds remaining outstanding and unpaid, with the interest thereon. The proceeds derived from the sale of such bonds shall be used for such purpose and no other.

(b) All taxes levied for the payment of the principal and interest of such bonds, all taxes levied by the abandoned and abolished county for all of its funds (except bond sinking and interest funds) delinquent at the time such county ceased to exist, and all money owing to such abandoned and abolished county from all other sources shall be, when collected, paid into a special sinking and interest fund and used for the purpose of paying the principal and interest of such bonds and for no other purpose.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2748. Special funding bond district bonds. (1) Bonds issued under 7-2-2747 shall not be issued for a longer period than 10 years and shall be issued without submitting the question of doing so to any election. Such bonds shall be issued in the name of such district and shall be signed by the trustees. The clerk shall attest the same and affix the seal of the district thereof, and they shall be registered in the office of the county treasurer, who shall certify such registration on such bonds. Except as otherwise provided herein and insofar as the same are not in conflict herewith, all of the provisions of 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104 through 7-7-2106, and parts 22 and 23 of chapter 7 shall apply to, govern, and control the issuance, sale, and payment of such bonds, with the interest thereon, and the levying of taxes for such purposes.

(2) There shall be inserted and made a part of each such bond statements setting forth the purpose for which the same is issued and that said bonds do not incur, create, or constitute any indebtedness or obligation whatever on the part of the county of (naming the county whose board of county commissioners, acting as such trustees, are issuing such bonds) but that the principal and interest thereof will be paid by special millage taxes levied against all of the taxable property situated within the boundaries of such special funding bond district.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2749. Payment of outstanding bonds of abandoned county. (1) If any abandoned and abolished county shall have any bonds outstanding and unpaid at the time it ceases to exist, the territory within the boundaries of such county as they existed when such county so ceased to exist shall constitute a special district for the payment thereof. The board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of such county is to be attached and made a part shall annually levy a tax against all taxable property in such taxing district sufficient to pay the interest and principal of such bonds as the same become due, and all of the provisions of 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104 through 7-7-2106, and parts 22 and 23 of chapter 7 shall apply to, govern, and control the levying and collection of such taxes and the payment of interest and principal thereof by the boards and officers of the county within which such district is situated.

(2) Any and all money in any bond sinking and interest funds of such abandoned and abolished county, when transmitted and paid over to the treasurer of the county to which the territory of such abandoned and abolished county has been attached, shall be credited to and deposited in a sinking and interest fund. All taxes levied for the payment of such bonds and interest and delinquent at the time such county ceased to exist, all taxes levied for such sinking and interest fund in accordance with the provisions of 7-2-2742 through 7-2-2750, and all other money coming to the hands of such county treasurer for the use or benefit of such abandoned county, when not required for any other purposes under the provisions of this part, shall be deposited to the credit of such sinking and interest fund and used for the payment of the principal and interest of such bonds and for no other purpose.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2750. Procedure to collect and transmit taxes when several counties involved. (1) Whenever any levy is made under the provisions of 7-2-2745 through 7-2-2749, the county clerk of the county in which the board of county commissioners makes such levy shall immediately certify such levy to the county clerk of each other county to which any part of the territory of the abandoned county has been attached.

(2) (a) The county clerk of each such other county shall compute and extend the taxes against the property within the portion of the abandoned county which has been attached to his county, and the treasurer of such county shall collect the same at the same time and in the same manner that other taxes are collected by said county treasurer.

(b) Each such treasurer shall, at least twice each year, once during the second week in December and once during the second week in June, transmit the amount of all such taxes paid to and collected by him and then in his hands as county treasurer to the treasurer of the county in which the board made such tax levy.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2751. Disposition of money of abandoned district. If, after all warrants issued and drawn by an abandoned and abolished district during its existence against its several funds and all warrants drawn and issued against said funds under the provisions of 7-2-2724 and 7-2-2741 have been fully paid, with the interest thereon:

(1) any balance remains in such funds, such balance, with any and all money thereafter accruing to any of such funds from the collection of delinquent taxes, unpaid licenses, and from other sources shall be deposited:

(a) to the credit of any special sinking and interest fund for the payment of district funding bonds issued under the provisions of 7-2-2745(2), 7-2-2747, and 7-2-2748; and

(b) if there be no such fund, then to the credit of any bond sinking and interest fund under 7-2-2749 and 7-2-2750; and

(2) after all warrants issued and drawn against any of such funds with the interest thereon, and all district funding bonds issued under the provisions

of 7-2-2745(2), 7-2-2747, and 7-2-2748 and all bonds referred to in 7-2-2749 have been fully paid, then any balance remaining in any of such funds and all money accruing to any or all of such funds thereafter from any and all sources shall be deposited to the credit of such funds of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county has been attached and made a part, as its board of county commissioners may direct.

History: **En. Sec. 17, Ch. 105, L. 1937; R.C.M. 1947, 16-4017.**

7-2-2752. Liability for and payment of indebtedness of abandoned county. It is intended by the provisions of this part that no part of the indebtedness of an abandoned and abolished county shall be assumed by, become an obligation of, or be paid by a county to which the territory of the abandoned and abolished county is attached and made a part, but that all money in all funds of an abandoned and abolished county at the time it ceases to exist and all money thereafter received by such funds from the payment of delinquent taxes and unpaid licenses and from all other sources owing to such county at the time it ceased to exist and all money received from the rental or sale of the property owned by such county shall be used for the payment of its indebtedness existing at the time it ceased to exist and the cost and expense of attaching its territory to and making it a part of any adjoining county. Such county to which any part of its territory is attached and made a part shall receive only such balance of any such money as may remain after all of the indebtedness and cost are fully paid.

History: **En. Sec. 21, Ch. 105, L. 1937; R.C.M. 1947, 16-4021.**

7-2-2753. Assessment of property in abandoned county. (1) The county assessor of a county abandoned and abolished under the provisions of this part shall, within 10 days after it ceases to exist, deliver to the county assessor of each county to which any part of its territory has been attached all assessment lists, reports, documents, and instruments relating to, concerning, or in any way affecting the assessment during the then-current assessment year of all taxable property within such portion of the abandoned and abolished county. The county assessor of the abandoned and abolished county shall, until midnight of June 30 of the year when the county ceases to exist, aid and assist the county assessors of the counties to which any part of the territory to be abandoned and abolished will be attached in the listing and assessing of all taxable property situated or located within each of such counties, to the end that all taxable property within the boundaries of the abandoned county will be fully assessed and taxed.

(2) It is the duty of the assessor of the county to whom such assessment lists, reports, documents, and instruments have been delivered by the assessor of the abandoned and abolished county to complete all assessments and to fully assess, during the then-current assessment year, all taxable property situated or located on January 1 of such year within the boundaries of such part of the abandoned and abolished county. Each such county assessor shall, in all matters and things connected in any way with the making of such assessments, have, possess, and exercise all of the powers and rights and shall perform all of the duties which the assessor of the abandoned and abolished

county would or could have had, possessed, exercised, or performed if the county had not been abandoned and abolished.

History: En. Sec. 19, Ch. 105, L. 1937; amd. Sec. 2, Ch. 388, L. 1975; R.C.M. 1947, 16-4019; amd. Sec. 16, Ch. 250, L. 1979.

7-2-2754. Ownership and management of property acquired by continuing county. Each county to which any part of an abandoned and abolished county is attached becomes the owner, under the provisions of this part, of the real and tangible personal property of the abandoned and abolished county and may use all of this property for county purposes, may lease any of this real estate, or may sell any of the real estate or personal property.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(1).

7-2-2755. Lease of acquired real property. No real property may be leased unless the board of county commissioners presents to the judge of the district court to which the county is attached a petition describing the real estate, with any improvements thereon, and setting forth the terms of the proposed lease. The petition shall be approved by the judge and filed in the office of the clerk of the county.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(3).

7-2-2756. Sale of acquired real property. (1) No real estate may be sold by the board of county commissioners unless the property has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county is attached, on petition of the board of such county. Every sale of real estate shall be made at public sale, and notice shall be published in the official newspaper of the county once a week for at least 2 weeks immediately prior to the date for holding the same. No such real estate shall be sold for a price less than 90% of the appraised value thereof.

(2) The full purchase price of any real estate so sold shall not be required to be made in one payment; but the purchaser thereof may pay the same in four installments, the first of which shall be not less than 25% of the purchase price, to be paid at the time of purchase, with the remainder to be paid in three equal annual installments with interest thereon at not less than 5% per annum. Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser thereof, and such contract shall be recorded in the office of the county clerk. When payment in full has been made for real estate, the chairman of the board shall execute and deliver the proper bill of sale or deed to the purchaser or his successor in interest.

(3) All real estate sold, with any improvements thereon, shall be subject to assessment and taxation annually to the purchaser or his successor in interest at a value equal to the amount paid on the purchase price thereof until the purchase price is fully paid, when such real estate shall be assessed at its full cash value. Any and all improvements placed on any such real estate after its purchase shall be subject to assessment and taxation at the full cash value thereof.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).

7-2-2757. Sale of acquired personal property. (1) No personal property having a value in excess of $100 may be sold unless it has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county succeeding to the ownership of the property is attached, on petition of the board of county commissioners thereof. No sale of any personal property may be made except at public sale after notice or for a price less than 90% of the appraised value.

(2) Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser thereof, and such contract shall be recorded in the office of the county clerk. When payment in full has been made for any personal property, the chairman of the board shall execute and deliver the proper bill of sale or deed to the purchaser or his successor in interest.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).

7-2-2758. Compensation for appraisers. The compensation of all appraisers appointed under the provisions of 7-2-2756 and 7-2-2757 shall be fixed by the district judge appointing the same.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).

7-2-2759. Distribution of money derived from acquired property. (1) Money received from leases or sales of real or personal property by any county other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county is to be allocated shall be transmitted by the officers of such county to the treasurer of the county designated in such petition for abandonment.

(2) All money received from the sale of personal property and from the leasing or sale of real estate, after deducting therefrom the amounts paid appraisers and for publishing notices of sale, shall be used and applied as follows:

(a) if there are any warrants issued and outstanding against any of the funds of the abandoned and abolished county, such money shall be applied in payment of such warrants and interest;

(b) if there are no warrants outstanding but district bonds have been issued under the provisions of 7-2-2745(2), 7-2-2747, and 7-2-2748, then the money shall be deposited in the sinking and interest fund for district bonds;

(c) if there are no district bonds outstanding, then the money shall be deposited to the credit of the sinking and interest funds for bonds issued and outstanding when the abandoned and abolished county ceased to exist; and

(d) if there are no bonds outstanding, then the money shall be apportioned to all of the counties to which parts of the abandoned county were attached in the proportion which the taxable value of the property in each part on January 1 immediately preceding the abandonment bears to the taxable value of all the property in the abandoned county, and the apportioned money shall be deposited in the funds of each county as the boards of county commissioners of the counties may direct.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).

Parts 28 through 40 reserved

Part 41

Organization and Incorporation of New Municipalities

7-2-4101. Petition to organize municipalities. (1) Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than two-thirds of the registered electors but not more than 300 such electors, who are residents of the state and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated.

(2) (a) The petition must describe the limits of the proposed city or town and of the several wards thereof, each of which shall contain 50 or more registered electors and must not exceed 1 square mile for each 500 inhabitants resident therein.

(b) The petitioners must annex to the petition a map of the proposed territory to be incorporated and state the name of the city or town.

(3) The petition and map must be filed in the office of the election administrator.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en. Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part); amd. Sec. 289, Ch. 571, L. 1979; amd. Sec. 1, Ch. 255, L. 1981.

Compiler's Comments

1981 Amendment: Decreased number of registered electors' signatures in (2)(a) from 150 to 50.

Effective Date: Section 3, Ch. 255, L. 1981, provided: "This act is effective on passage and approval." Approved April 3, 1981.

7-2-4102. Census of proposed municipality. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a house-to-house census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board, and the same must be filed by it in the county clerk's office.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en. Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part).

7-2-4103. Prerequisites to organization of municipality. No municipal corporation may be formed unless:

(1) (a) the number of inhabitants is 300 or upwards; or

(b) the community was a townsite owned and built by the U.S. government prior to April 3, 1981; and

(2) the boundary of the proposed territory to be incorporated is more than 3 miles from the boundary, measured from the nearest point between the two, of any presently incorporated city or town or there is presented to the board appropriate evidence that any presently incorporated city or town within 3 miles which legally could annex has refused to annex the proposed territory.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en. Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part); amd. Sec. 2, Ch. 255, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (1)(b).

Effective Date: Section 3, Ch. 255, L. 1981, provided: "This act is effective on passage and approval." Approved April 3, 1981.

7-2-4104. Election on question of organization. (1) After filing the petition and census, if there is the requisite number of inhabitants for the formation of a municipal corporation as required in 7-2-4103, the county commissioners must call an election of all the registered electors residing in the territory described in the petition.

(2) The election must be held at a convenient place within the territory described in the petition, to be designated by the board.

(3) The ballots used at the election must contain the words "For incorporation" or "Against incorporation", and all elections must be conducted as provided in Title 13.

History: En. Sec. 316, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907; re-en. Sec. 4962, R.C.M. 1921; re-en. Sec. 4962, R.C.M. 1935; R.C.M. 1947, 11-204(part); amd. Sec. 290, Ch. 571, L. 1979.

7-2-4105. Notice of election on question of organization. Notice of the election shall be published as provided in 13-1-108. The notice shall contain a description of the boundaries of the city or town.

History: En. Sec. 316, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907; re-en. Sec. 4962, R.C.M. 1921; re-en. Sec. 4962, R.C.M. 1935; R.C.M. 1947, 11-204(part); amd. Sec. 291, Ch. 571, L. 1979.

7-2-4106. First election for officers. (1) When the incorporation of a city or town is completed, the board of county commissioners must give notice for 30 days in a newspaper published within the limits of the city or town or, if none is published therein, by posting notices in six public places within the limits of the corporation of the time and place or places of holding the first election for offices of the corporation.

(2) At such election all the electors qualified by the general election laws of the state who have resided within the limits of the city or town for 6 months and within the limits of the ward for 30 days preceding the election are qualified electors and may choose officers for the city or town, to hold office as prescribed in 7-2-4107.

(3) The board must appoint election judges and canvass and declare the result thereof. The election must be conducted in the manner required by law for the election of county officers.

History: En. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Secs. 4722, 4723, Pol. C. 1895; re-en. Secs. 3210, 3211, Rev. C. 1907; re-en. Secs. 4963, 4964, R.C.M. 1921; re-en. Secs. 4963, 4964, R.C.M. 1935; R.C.M. 1947, 11-205, 11-206(part); amd. Sec. 292, Ch. 571, L. 1979.

7-2-4107. Officers elected at first election. (1) At such election there must be elected:

(a) in a city of the first class, a mayor, a city judge, a city attorney, a city treasurer, a city marshal, and two aldermen from each ward into which the city may be divided;

(b) in a city of the second class, a mayor, a city judge, a city treasurer, a city marshal, and two aldermen from each ward;

(c) in a town, a mayor and two aldermen from each ward.

(2) Those elected hold office until the first Monday of January after the first annual election and until their successors are elected and qualified. The persons so elected must qualify in the manner prescribed by law for county officers.

History: En. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4723, Pol. C. 1895; re-en. Sec. 3211, Rev. C. 1907; re-en. Sec. 4964, R.C.M. 1921; re-en. Sec. 4964, R.C.M. 1935; R.C.M. 1947, 11-206(part); amd. Sec. 380, Ch. 571, L. 1979.

Part 42

Addition to Municipalities

7-2-4201. Additions to municipalities. Whenever territory adjoining any incorporated city or town is surveyed and laid off into streets or blocks as an addition thereto, said territory may become a part of such city or town:

(1) upon filing the map or plat thereof in the office of the county clerk; and

(2) upon the approval of the mayor and a majority of the council endorsed thereon.

History: En. Sec. 4724, Pol. C. 1895; re-en. Sec. 3212, Rev. C. 1907; re-en. Sec. 4976, R.C.M. 1921; re-en. Sec. 4976, R.C.M. 1935; R.C.M. 1947, 11-401.

7-2-4202. Control of additions. The council has control of all such additions.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).

7-2-4203. Imposition of conditions for approval of addition. (1) The council has power by ordinance to compel the owners of these additions to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction and be continuations of the streets, avenues, and alleys in the city or town or in the addition thereto contiguous to or near the proposed addition.

(2) The owner of any addition has no rights or privileges unless the terms and conditions of the ordinance are complied with and the plat thereof has been submitted to and approved by the mayor and council and such approval endorsed thereon.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).

7-2-4204. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: **En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 1, Ch. 130, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (2).

Interim Study Committee Bill: House Bill 54 (Ch. 130, L. 1981) was introduced at the request of the Study Committee on Annexation Laws, see committee report, Legislative Council, 1980.

Codification: Sec. 4, Ch. 642, L. 1979, provided: "Section 3 is intended to be codified as five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified." Section 3 is codified as 7-2-4204, 7-2-4304, 7-2-4409, 7-2-4505, and 7-2-4609(2).

7-2-4205. Provision of services. In all cases of annexation under current Montana law, services will be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, where otherwise mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: **En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 1, Ch. 447, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "according to a plan provided by the municipality" after "services will be provided"; substituted "as specified in 7-2-4732" for "as specified in Title 7, chapter 2, part 47"; added subsection (1); and inserted "in first-class cities" and "otherwise" at the beginning of subsection (2).

Interim Committee Bill: Chapter 447, L. 1981 (HB 58) was introduced at the request of the Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

7-2-4206 through 7-2-4209 reserved.

7-2-4210. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: **En. Sec. 1, Ch. 109, L. 1981.**

Compiler's Comments

1981 Title: The title to Ch. 109, L. 1981 (HB 55), read: "An act prescribing conditions under which land is presumed to be annexed and may be so recorded."

Codification Instruction: Section 2, Ch. 109, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 7, chapter 2, parts 42 through 47, and the provisions of Title 7, chapter 2, parts 42 through 47, apply to section 1."

Interim Study Committee Bill: Chapter 109, L. 1981 (HB 55), was introduced at the request of the interim Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

Part 43

Annexation of Contiguous Land

7-2-4301. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: **En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.**

7-2-4302. Annexation of contiguous municipalities. (1) When a city or town desires to be annexed to a contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities, respectively, the terms and conditions on which the annexation can be made.

(2) If the city or town council of the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated.

(3) When the copy of the proceedings and the ordinances is filed, the annexation is complete and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation.

(4) Such annexations do not affect or impair any rights, obligations, or liabilities then existing for or against either of such cities or towns.

History: **En. Sec. 322, 5th Div. Comp. Stat. 1887; re-en. Sec. 4727, Pol. C. 1895; re-en. Sec. 3215, Rev. C. 1907; re-en. Sec. 4979, R.C.M. 1921; re-en. Sec. 4979, R.C.M. 1935; R.C.M. 1947, 11-405.**

7-2-4303. Restrictions on annexation power. Land used for industrial or manufacturing purposes shall not be included in such city under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4321 through 7-2-4325 without the consent in writing of the owners of such land.

History: **En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).**

7-2-4304. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: **En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 2, Ch. 130, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (2).

Interim Study Committee Bill: House bill 54 (Ch. 130, L. 1981) was introduced at the request of the Study Committee on Annexation Laws, see committee report, Legislative Council, 1980.

Codification: Sec. 4, Ch. 642, L. 1979, provided: "Section 3 is intended to be codified as five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified." Section 3 is codified as 7-2-4204, 7-2-4304, 7-2-4409, 7-2-4505, and 7-2-4609(2).

7-2-4305. Provision of services. In all cases of annexation under current Montana law, services will be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, where otherwise mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 2, Ch. 447, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "according to a plan provided by the municipality" after "services will be provided"; substituted "as specified in 7-2-4732" for "as specified in Title 7, chapter 2, part 47"; added subsection (1); and inserted "in first-class cities" and "otherwise" at the beginning of subsection (2).

Interim Committee Bill: Chapter 447, L. 1981 (HB 58) was introduced at the request of the Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

7-2-4306 through 7-2-4310 reserved.

7-2-4311. Annexation of contiguous land by cities of the first class. Any tracts or parcels of land which have been or may hereafter be platted into lots or blocks, streets, and alleys or platted for parks and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof and the boundaries of such city of the first class extended so as to include the same in the manner provided in 7-2-4312 through 7-2-4314.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4312. Resolution of intent by first-class city — notice. When, in the judgment of any city council of a city of the first class expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants of any contiguous platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed that the boundaries of such city shall be extended so as to include the same within the corporate limits thereof, the city clerk of such city shall:

(1) immediately notify in writing, addressed to the address to which tax notices are sent, all owners of property in the territory to be embraced; and

(2) cause a notice to be published in the newspaper published nearest such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, at least once a week for 2 successive weeks.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4313. Contents of notice — protest period. The notice shall be to the effect that:

(1) such resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of such notice, such city clerk will receive expressions, in writing, of approval or disapproval of the proposed extensions of the boundaries of such city of the first class from freeholders of the territory proposed to be embraced therein.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4314. Hearing on question of annexation — resolution of annexation. (1) The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said 20 days, lay before the same all communications in writing so received by him for its consideration. Except as provided in subsection (2), if after considering the same such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed; the time when the same shall go into effect to be fixed by such resolution.

(2) Such resolution shall not be adopted by such council if disapproved in writing by a majority of the resident freeholders of the territory proposed to be embraced, and no further resolutions relating to the annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition for a period of 1 year from the date of disapproval.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4315 through 7-2-4320 reserved.

7-2-4321. Annexation of contiguous land by municipalities of the second or third class. Any tracts or parcels of land which shall be contiguous to any incorporated cities or towns of the second and third class may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the manner provided in 7-2-4322 through 7-2-4325.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4322. Resolution of intent by second- or third-class municipality — notice. When, in the judgment of any such city or town council expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city or town and the inhabitants thereof and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended so as to include the same within the corporate limits thereof, the city or town clerk of such city or town shall:

(1) forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced; and

(2) cause a notice to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for 2 successive weeks.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4323. Contents of notice — protest period. The notice shall be to the effect that:

(1) such resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of such notice, such city or town clerk will receive expressions in writing of approval or disapproval of the proposed extensions of the boundaries of such city or town from freeholders of the territory proposed to be embraced therein.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4324. Hearing on question of annexation — resolution of annexation. (1) The clerk shall, at the next regular meeting of the city or town council after the expiration of said 20 days, lay before the same all communications in writing so received by him for its consideration. Except as provided in subsection (2), if after considering the same such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town of the second or third class shall be extended so as to embrace and include such tracts or parcels of land; the time when the same shall go into effect to be fixed by such resolution.

(2) Such resolution shall not be adopted by such council if disapproved in writing by a majority of the freeholders of the territory proposed to be embraced.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4325. Consolidation of proceedings for two or more tracts. Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under 7-2-4321 through 7-2-4325, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(3).

7-2-4326 through 7-2-4330 reserved.

7-2-4331. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 109, L. 1981 (HB 55), read: "An act prescribing conditions under which land is presumed to be annexed and may be so recorded."

Codification Instruction: Section 2, Ch. 109, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 7, chapter 2, parts 42 through 47, and the provisions of Title 7, chapter 2, parts 42 through 47, apply to section 1."

Interim Study Committee Bill: Chapter 109, L. 1981 (HB 55), was introduced at the request of the interim Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

Part 44

Annexation of Contiguous Government Land

7-2-4401. What constitutes contiguous land for purpose of part. The land proposed to be annexed to a municipality under the provisions of this part shall be deemed contiguous to such municipality even though such land may be separated from such municipality by a street or other roadway, a sidewalk, a public way of any kind, an irrigation ditch or drainage ditch, or some other strip too small for the erection of houses.

History: En. Sec. 2, Ch. 189, L. 1957; R.C.M. 1947, 11-512.

7-2-4402. Annexation of contiguous government land. Whenever any land contiguous to a municipality is owned by the United States or by the state of Montana or by any agency, instrumentality, or political subdivision of either or whenever any of the foregoing have a beneficial interest in any land contiguous to a municipality, such land may be incorporated and included in the municipality to which it is contiguous and may be annexed thereto and made a part thereof in the manner provided in this part.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4403. Request for annexation by government official. The administrative head of the owner of land referred to in 7-2-4402 or the administrative head of the holder of a beneficial interest in such land shall file with the clerk of the municipality a description of the land, a certification of ownership or of beneficial interest therein, and a statement that the owner of or the holder of the beneficial interest in the land desires to have it annexed.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4404. Resolution of intent to annex. Upon receiving the request provided for in 7-2-4403, the governing body of the municipality shall pass a resolution reciting its intention to annex the land and setting a time and place for a public hearing thereon.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4405. Notice of resolution — protest period. The clerk of the municipality shall forthwith cause to be published in the newspaper nearest such land, at least once a week for 2 successive weeks, a notice that such resolution has been duly and regularly passed and that for a period of 20 days after the first publication of such notice, such clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of the municipality. Said notice shall also state the time and place set for the public hearing on the proposed annexation.

History: **En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(2).**

7-2-4406. Hearing on question of annexation — resolution of annexation. (1) At the time and place set for the aforesaid public hearing, the governing body of the municipality shall hear all persons and all things relative to the proposed annexation.

(2) If the governing body shall find that it is to the best interests of the municipality and its inhabitants to annex the land, it shall adopt a resolution of annexation of the land. Said resolution shall become effective 30 days after its passage and approval, and thereafter the boundary of said municipality shall be as set forth in said resolution.

History: **En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).**

7-2-4407. Filing of resolution and other papers. Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of the municipality, together with a map showing the corporate limits of said municipality as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said municipality is located.

History: **En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).**

7-2-4408. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: **En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 3, Ch. 130, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (2).

Interim Study Committee Bill: House Bill 54 (Ch. 130, L. 1981) was introduced at the request of the Study Committee on Annexation Laws, see committee report, Legislative Council, 1980.

Codification: Sec. 4, Ch. 642, L. 1979, provided: "Section 3 is intended to be codified as five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified." Section 3 is codified as 7-2-4204, 7-2-4304, 7-2-4409, 7-2-4505, and 7-2-4609(2).

7-2-4409. Provision of services. In all cases of annexation under current Montana law, services will be provided as specified in Title 7, chapter

2, part 47, except where mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: **En. Sec. 2, Ch. 642, L. 1979.**

7-2-4410 through 7-2-4420 reserved.

7-2-4421. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: **En. Sec. 1, Ch. 109, L. 1981.**

Compiler's Comments

1981 Title: The title to Ch. 109, L. 1981 (HB 55), read: "An act prescribing conditions under which land is presumed to be annexed and may be so recorded."

Codification Instruction: Section 2, Ch. 109, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 7, chapter 2, parts 42 through 47, and the provisions of Title 7, chapter 2, parts 42 through 47, apply to section 1."

Interim Study Committee Bill: Chapter 109, L. 1981 (HB 55), was introduced at the request of the interim Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

Part 45

Annexation of Wholly Surrounded Land

7-2-4501. Annexation of wholly surrounded land by cities of the first class. A city of the first class may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation. Except as provided in 7-2-4502, the provisions of 7-2-4312 through 7-2-4314 apply to these resolutions and the notice requirement.

History: **En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 17, Ch. 250, L. 1979.**

7-2-4502. Protest not available. Such land shall be annexed, if so resolved, whether or not a majority of the resident freeholders of the land to be annexed object.

History: **En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).**

7-2-4503. Restrictions on annexation power. Land shall not be annexed under this part whenever the land is used:

(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or

(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto.

History: **En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd.**

Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4504. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

7-2-4505. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 4, Ch. 130, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

Interim Study Committee Bill: House Bill 54 (Ch. 130, L. 1981) was introduced at the request of the Study Committee on Annexation Laws, see committee report, Legislative Council, 1980.

Codification: Sec. 4, Ch. 642, L. 1979, provided: "Section 3 is intended to be codified as five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified." Section 3 is codified as 7-2-4204, 7-2-4304, 7-2-4409, 7-2-4505, and 7-2-4609(2).

7-2-4506. Provision of services. In all cases of annexation under current Montana law, services will be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, where otherwise mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 3, Ch. 447, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "according to a plan provided by the municipality" after "services will be provided"; substituted "as specified in 7-2-4732" for "as specified in Title 7, chapter 2, part 47"; added subsection (1); and inserted "in first-class cities" and "otherwise" at the beginning of subsection (2).

Interim Committee Bill: Chapter 447, L. 1981 (HB 58) was introduced at the request of the Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

7-2-4507 through 7-2-4510 reserved.

7-2-4511. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 109, L. 1981 (HB 55), read: "An act prescribing conditions under which land is presumed to be annexed and may be so recorded."

Codification Instruction: Section 2, Ch. 109, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 7, chapter 2, parts 42 through 47, and the provisions of Title 7, chapter 2, parts 42 through 47, apply to section 1."

Interim Study Committee Bill: Chapter 109, L. 1981 (HB 55), was introduced at the request of the interim Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

Part 46

Annexation by Petition

7-2-4601. Annexation by petition. (1) The boundaries of any incorporated city or town, whether heretofore or hereafter formed, may be altered and new territory or territories annexed thereto, incorporated and included therein, and made a part thereof upon proceedings being had and taken as provided in this part.

(2) The council or other legislative body of any such municipal corporation, upon receiving a written petition therefor containing a description of the new territory or territories asked to be annexed to the corporation and signed by not less than 33 ⅓ % of the registered electors of the territory proposed to be annexed, must without delay submit to the electors of the municipal corporation and to the registered electors residing in the territory or territories proposed by the petition to be annexed to the corporation, the question whether the new territory or territories shall be annexed to, incorporated in, and made a part of the municipal corporation.

(3) The governing body of a municipality, upon receiving a written petition containing a description of territory requested to be annexed and signed by more than 50% of the resident freeholder electors of the territory to be annexed, need not submit the question of annexation to the qualified electors as provided in subsection (2). The governing body may approve or disapprove the petition upon its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.

History: En. Sec. 1, Ch. 168, L. 1947; R.C.M. 1947, 11-506(1); amd. Sec. 293, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 641, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-2-4602. Election on question of annexation by petition. (1) The question of annexation may be submitted at the next general municipal election to be held in the municipal corporation or it may be submitted prior to the general election, either at a special election called for that purpose or at any other municipal election, except an election at which the submission of such question is prohibited by law.

(2) The election shall be conducted and the returns made in the same manner as other city or town elections. All election laws governing city and town elections shall govern, insofar as they are applicable.

(3) Whenever the question of annexation under this title is submitted at either a general city or town election or at a special election, separate ballots, shall be provided therefor.

History: En. Secs. 1, 2, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part), 11-507(part); amd. Sec. 294, Ch. 571, L. 1979.

7-2-4603. Notice of election. (1) The council or legislative body shall publish notice of the election as provided in 13-1-108.

(2) Such notice shall distinctly state the proposition to be submitted, i.e., that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory or territories sought to be annexed, specifically describing the boundaries thereof.

(3) The notice of election shall designate the date of the election.

History: En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part); amd. Sec. 295, Ch. 571, L. 1979.

7-2-4604. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

7-2-4605. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

7-2-4606. Resolution of annexation. (1) (a) If it is found that a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days thereafter, pass and adopt a resolution providing for such annexation.

(b) Such resolution shall recite that a petition has been filed with the said council or other legislative body with a sufficient number of signatures of 33 ⅓% of the resident freeholder electors of the territory proposed to be annexed; a description of the boundaries of the territory or territories to be annexed; a copy of the resolution ordering a general or special election thereof, as the case may be; a copy of the notice of such election; the time and result of the canvass of the votes received in favor of annexation and the number thereof cast against annexation; and that the boundaries of such city or town, by such resolution, shall be extended so as to embrace and include such territory or territories as the same are described in the petition for annexation, which said resolution shall be incorporated in the minutes of said council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident freeholder electors of the territory to be annexed; a description of the boundaries of the territory to be annexed; and a statement that the boundaries of the municipality are to be extended to include the territory described in the petition for annexation. The resolution shall be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607.

History: (1)En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(3); (2)En. Sec. 1, Ch. 641, L. 1979.

Compiler's Comments

Commissioner correction. The term "The resolution" which originally appeared in subsection (2) was changed to "A resolution adopted pursuant to 7-2-4601(3)" by the Code Commissioner, 1979, because of rearrangement of sec. 1, Ch. 641, L. 1979, during codification.

7-2-4607. Filing of resolution. (1) The clerk or other officer performing the duties of clerk of such council or legislative body shall promptly make and certify under the seal of said municipal corporation a copy of said record so entered upon said minutes, which document shall be filed with the clerk of the county in which the city or town to which said territory or territories are sought to be annexed is situated.

(2) From and after the date of the filing of said document in the office of the county clerk, the annexation of such territory or territories so proposed to be annexed shall be deemed and shall be complete. Thenceforth such annexed territory or territories shall be, to all intents and purposes, a part of said municipal corporation, and the said city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(4).

7-2-4608. Restrictions on annexation power. (1) No territory which, at the time such petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated city or town shall be annexed under the provisions of this part.

(2) No parcel of land which, at the time such petition for such proposed annexation is presented to such council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto shall be annexed under the provisions of this part.

History: En. Secs. 3, 4, Ch. 168, L. 1945; R.C.M. 1947, 11-508, 11-509.

7-2-4609. Applicability of part. (1) This part does not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but provides an alternative method that the municipal governing body may in its discretion choose to use for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this part, the provisions of this part and no other apply to such proceedings.

(3) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

History: En. Sec. 5, Ch. 168, L. 1945; R.C.M. 1947, 11-510; amd. Sec. 18, Ch. 250, L. 1979; amd. Sec. 2, Ch. 641, L. 1979; (3)En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 5, Ch. 130, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "that the municipal governing body may in its discretion choose to use" after "provides an alternative method" in (1).

Interim Study Committee Bill: House bill 54 (Ch. 130, L. 1981) was introduced at the request of the Study Committee on Annexation Laws, see committee report, Legislative Council, 1980.

Composite Section: This section was amended by Ch. 250, Ch. 641, and Ch. 642, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 250 was a Code Commissioner bill and was not intended to make substantive changes in the law. Consequently a conflict of language in subsection (1) between Ch. 250 and Ch. 641 has been resolved in favor of the language used in Ch. 641.

Codification: Sec. 4, Ch. 642, L. 1979, provided: "Section 3 is intended to be codified as five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified." Section 3 is codified as 7-2-4204, 7-2-4304, 7-2-4409, 7-2-4505, and 7-2-4609(2).

7-2-4610. Provision of services. In all cases of annexation under current Montana law, services will be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, where otherwise mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 4, Ch. 447, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "according to a plan provided by the municipality" after "services will be provided"; substituted "as specified in 7-2-4732" for "as specified in Title 7, chapter 2, part 47"; added subsection (1); and inserted "in first-class cities" and "otherwise" at the beginning of subsection (2).

Interim Committee Bill: Chapter 447, L. 1981 (HB 58) was introduced at the request of the Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

7-2-4611 through 7-2-4620 reserved.

7-2-4621. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 109, L. 1981 (HB 55), read: "An act prescribing conditions under which land is presumed to be annexed and may be so recorded."

Codification Instruction: Section 2, Ch. 109, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 7, chapter 2, parts 42 through 47, and the provisions of Title 7, chapter 2, parts 42 through 47, apply to section 1."

Interim Study Committee Bill: Chapter 109, L. 1981 (HB 55), was introduced at the request of the interim Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

Part 47

Annexation With the Provision of Services

7-2-4701. Short title. This part shall be entitled "The Planned Community Development Act of 1973".

History: En. 11-514 by Sec. 1, Ch. 364, L. 1974; R.C.M. 1947, 11-514.

7-2-4702. Findings. (1) It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana system are in many cases discriminatory and are in many of the Montana cities causing indiscriminate growth patterns and in many cases forcing citizens of municipalities to be annexed without provision for adequate city services extended and provided for them.

(2) Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the benefit of the city, merely to derive a greater tax base.

(3) Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many

benefits from the city without paying their just and equal share for these services.

History: En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).

7-2-4703. Purpose. It is the purpose of this part to develop a just and equitable system of adding to and increasing city boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state, and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development, and future annexations must consider these principles.

(3) Municipal boundaries should be extended in accordance with legislative standards applicable throughout the state to include such areas and to provide the high quality of governmental services needed for the public health, safety, and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

History: En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).

7-2-4704. Definitions. The following terms where used in this part have the following meanings except where the context clearly indicates a different meaning:

(1) "Contiguous" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any city or town under Montana law.

(3) "Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed in the office of the county clerk and recorder.

History: En. 11-516 by Sec. 3, Ch. 364, L. 1974; R.C.M. 1947, 11-516.

7-2-4705. Annexation by municipalities providing services. (1) The governing body of any municipality may extend the corporate limits of such municipality under the procedure set forth in this part upon the initiation of the procedure by the governing body itself.

(2) Whenever the resident freeholders situated outside the corporate boundaries of any municipality, but contiguous thereto, desire to have real estate annexed to the municipality, they may file with the governing body of the municipality a petition bearing the signatures of 51% of the resident freeholders in the territory sought to be annexed, requesting a resolution

stating the intent of the municipality to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731(2).

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part); amd. Sec. 19, Ch. 250, L. 1979.

7-2-4706. Appeal if municipal governing body fails to act on petition. If the municipal governing body fails to act within 60 days, the petitioners may appeal to the district court under the procedure set down in 7-2-4741 through 7-2-4746.

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part).

7-2-4707. Resolution of intention to annex. The governing body of any municipality desiring to annex territory under the provisions of this part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 30 days and not more than 60 days following passage of the resolution.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(1).

7-2-4708. Notice of hearing. (1) The notice of public hearing shall:

(a) fix the date, hour, and place of the public hearing;

(b) describe clearly the boundaries of the area under consideration;

(c) state that the report required in 7-2-4731 will be available in the office of the municipal official designated by the governing body at least 14 days prior to the date of the public hearing.

(2) Such notice will be given by publication in a newspaper having general circulation in the municipality once a week for at least 4 successive weeks prior to the date of the hearing. The date of the last publication shall not be more than 7 days preceding the date of the public hearing. If there is no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(2).

7-2-4709. Hearing on question of annexation. (1) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in 7-2-4731.

(2) Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(4).

7-2-4710. Protest. (1) For a period of 20 days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall receive expressions, in writing, of approval or disapproval of the proposed annexation from resident freeholders of the territory proposed to be annexed.

(2) If a majority of the said resident freeholders in writing disapprove the proposed annexation, no further proceedings under this part shall be had

relating to the territory proposed to be annexed or any part thereof for a period of 1 year from the date of such disapproval.

History: **En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(8).**

7-2-4711. Ordinance of annexation. The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by 7-2-4731 and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of 7-2-4731 through 7-2-4733. At any regular or special meeting held no sooner than 7 days and no later than 60 days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all or such part of the area described in the notice of public hearing which meets the requirements of 7-2-4734 and 7-2-4735 and which the governing body has concluded should be annexed.

History: **En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).**

7-2-4712. Contents of ordinance of annexation. (1) The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by 7-2-4731; and

(c) fix the effective date of annexation.

(2) The external boundaries of the area to be annexed shall be described by metes and bounds.

History: **En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).**

7-2-4713. Effective date of annexation. The effective date of annexation may be fixed for any date within 12 months from the date of passage of the ordinance.

History: **En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).**

7-2-4714. Filing of annexation order. (1) The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed is situated.

(2) From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete. Thenceforth such annexed territory or territories shall be a part of the municipal corporation and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: **En. 11-521 by Sec. 8, Ch. 364, L. 1974; R.C.M. 1947, 11-521.**

7-2-4715. Simultaneous proceedings for several areas. If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this part for the annexation of such areas.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(7).

7-2-4716. Effect of annexation. (1) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality.

(2) The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer, or other utilities or improvements paid for by the residents of said district shall not be subject to that part of the municipal taxes levied for debt service for the first 5 years after the effective date of annexation.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(6).

7-2-4717. Certain expenditures authorized. (1) Municipalities initiating annexations under the provisions of this part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality.

(2) In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines, and other capital facilities in the annexed area.

History: En. 11-524 by Sec. 11, Ch. 364, L. 1974; R.C.M. 1947, 11-524.

7-2-4718. Construction. (1) The method of annexation authorized in this part is independent from other methods of annexation authorized by state law.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. 11-525 by Sec. 12, Ch. 364, L. 1974; R.C.M. 1947, 11-525(part); amd. Sec. 1, Ch. 642, L. 1979; amd. Sec. 6, Ch. 130, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

Interim Study Committee Bill: House bill 54 (Ch. 130, L. 1981) was introduced at the request of the Study Committee on Annexation Laws, see committee report, Legislative Council, 1980.

7-2-4719 through 7-2-4730 reserved.

7-2-4731. Plans and report on extension of services required. (1) A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 7-2-4707 through 7-2-4709, prepare a report setting forth its plans to provide services to such area. This report shall include:

(a) a map or maps of the municipality and adjacent territory to show the following information:

(i) the present and proposed boundaries of the municipality;

(ii) the present streets, major trunk water mains, sewer interceptors and outfalls, and other utility lines and the proposed extension of such streets and utility lines as required in subsection (1)(c); and

(iii) the general land-use pattern in the areas to be annexed;

(b) a statement showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(c) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(2) At least 14 days before the date of the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body shall approve the report and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

History: **(1)En. 11-518 by Sec. 5, Ch. 364, L. 1974; Sec. 11-518, R.C.M. 1947; (2)En. 11-520 by Sec. 7, Ch. 364, L. 1974; Sec. 11-520, R.C.M. 1947; R.C.M. 1947, 11-518(part), 11-520(3).**

7-2-4732. Contents of plan for extension of services. (1) Specifically, the plans for the extension of services shall provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5 years into the future, showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city.

(2) The plans shall:

(a) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation;

(b) provide for future extension of streets and of major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

(c) if extension of streets and water, sewer, or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines.

(3) A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and no capital improvements are needed to provide adequate services stipulated by this section and 7-2-4731, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

(4) In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part).

7-2-4733. Vote required on proposed capital improvements. Included within the plan must be methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over 50% of the residents in the section or sections to be annexed in such election, the area may not be annexed.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part); amd. Sec. 20, Ch. 250, L. 1979.

7-2-4734. Standards to be met before annexation can occur. A municipal governing body may extend the municipal corporate limits to include any area which meets the following standards:

(1) It must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) It must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 76, chapter 1.

(4) No part of the area may be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of part 21, chapter 33, if the fire district was originally organized at least 10 years prior to the inception of such attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 7-33-2127.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(1), (2).

7-2-4735. Guidelines for new boundaries of municipality. In fixing new municipal boundaries, a municipal governing body shall:

(1) wherever practical, use natural topographic features such as ridgelines, streams, and creeks as boundaries; and

(2) if a street is used as a boundary, include within the municipality land on both sides of the street, with such outside boundary not extending more than 200 feet beyond the right-of-way of the street.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(3).

7-2-4736. Preservation of existing garbage or solid waste service in the event of annexation. A municipality that annexes or incorporates additional area receiving garbage and solid waste disposal service by a motor carrier authorized by the public service commission to conduct such service may not provide competitive or similar garbage and solid waste disposal service to the area for 5 years following annexation except upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area, and after the expiration of 5 years, the municipality may provide such service only if a majority of the residents of the annexed or incorporated area request in writing to the municipality that such service be provided by the municipality. If a proper showing is made that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area or if a majority of the residents request service from the municipality, the municipality may assume sole jurisdiction for garbage and solid waste disposal service to the entire annexed or incorporated area.

History: En. 11-526 by Sec. 1, Ch. 131, L. 1977; R.C.M. 1947, 11-526; amd. Sec. 1, Ch. 434, L. 1979.

7-2-4737 through 7-2-4740 reserved.

7-2-4741. Right to court review when area annexed. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, either a majority of the resident freeholders in the territory or the owners of more than 75% in assessed valuation of the real estate in the territory who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedure set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as they apply to their property, may file a petition in the district court of the district in which the municipality is located seeking review of the action of the governing board and serve a copy of the petition on the municipality in the manner of service of civil process.

(2) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(1), (2).

7-2-4742. Court review and decision when area annexed. (1) The review authorized under 7-2-4741 shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs and may take evidence intended to show that either:

(a) the statutory procedure was not followed; or

(b) the provisions of 7-2-4731 through 7-2-4735 were not met.

(2) The court may affirm the action of the governing body without change, or it may:

(a) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

(b) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of 7-2-4734 and 7-2-4735, but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or

(c) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of 7-2-4731 through 7-2-4733 are satisfied.

(3) If any municipality fails to take action in accordance with the court's instructions upon remand within 3 months from receipt of such instructions, the court may in its discretion extend the time for compliance.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(3).

7-2-4743. Presumption that municipal actions lawful. All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful until and unless they are modified or set aside by the governing body or upon review.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(5).

7-2-4744. Appeal from district court. Any party to the review proceedings, authorized under 7-2-4741 including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court. The lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).

7-2-4745. Effect of appeal on effective date of annexation. If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).

7-2-4746. Appeal provisions exclusive. No decisions of the governing body shall be subject to collateral attack, and decisions may be reviewed or modified only in the manner provided in 7-2-4741 through 7-2-4744.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(6).

7-2-4747 through 7-2-4750 reserved.

7-2-4751. Right to court review when area not annexed. (1) After the resident freeholders have properly petitioned the governing body of the municipality and the body has failed to pass a resolution of intent to annex within 60 days, the petitioners may file a complaint and a duplicate copy of the petition in the district court of the proper jurisdiction stating the reason why the proposed annexation should take place.

(2) The municipality shall be designated party defendant in the cause and shall be required to appear and answer as in other cases.

History: En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part).

7-2-4752. Court review and decision when area not annexed. (1) The court, without a jury, shall hear and determine the questions presented in the petition.

(2) The court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state, if the evidence establishes that:

(a) essential municipal services and facilities are not available to the inhabitants of such territory;

(b) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(c) at least one-eighth of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality.

(3) If, however, the evidence does not establish all three of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

History: **En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part).**

7-2-4753 through 7-2-4760 reserved.

7-2-4761. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: **En. Sec. 1, Ch. 109, L. 1981.**

Compiler's Comments

1981 Title: The title to Ch. 109, L. 1981 (HB 55), read: "An act prescribing conditions under which land is presumed to be annexed and may be so recorded."

Codification Instruction: Section 2, Ch. 109, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 7, chapter 2, parts 42 through 47, and the provisions of Title 7, chapter 2, parts 42 through 47, apply to section 1."

Interim Study Committee Bill: Chapter 109, L. 1981 (HB 55), was introduced at the request of the interim Study Committee on Annexation Laws. See committee report, Legislative Council, 1980.

Part 48

Exclusion of Land

7-2-4801. Use of terms contiguous and adjacent. For the purposes of this part, the words "contiguous" and "adjacent" shall include property on the opposite side of a street or alley from the property sought to be withdrawn.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

7-2-4802. Exclusion of land from municipalities. The boundaries of any incorporated city or town of this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities and towns are hereby granted power to enact resolutions for that purpose after proceedings had as required in this part.

History: **En. Sec. 1, Ch. 33, L. 1927; re-en. Sec. 4979.1, R.C.M. 1935; R.C.M. 1947, 11-501.**

7-2-4803. Petition to exclude land. (1) A petition in writing, signed by a number of the qualified electors residing within the corporate limits of such city or town equal to a majority of the votes cast at the last city election held therein or by the owners of not less than three-fourths in value of the territory sought to be excluded, shall be filed with the clerk of such city or town.

(2) Such petition shall be presented to the council of such city or town at the next regular meeting after the filing thereof.

History: En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).

7-2-4804. Contents of petition. (1) Such petition shall set out and describe the territory to be excluded from the corporate limits, which territory must be on the border of such city or town, and the alteration of the boundaries desired by the petitioners, together with the boundaries of the city or town as it will exist after such change is made. Said petition shall also describe the streets, avenues, alleys, and public places, if any, in the territory sought to be excluded and shall distinctly specify which of said streets, avenues, alleys, or public places are to be retained for the use of the public after the territory has been excluded from the corporate limits of such city or town.

(2) Such petition shall pray that the council of such city or town shall enact a resolution altering the boundaries of such city or town and excluding therefrom the territory therein described.

History: En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).

7-2-4805. Resolution of intent to exclude land — notice. If said council by resolution, duly and regularly passed and adopted, shall find that said petition is signed by the requisite number of qualified electors of said city or town or by the owners of not less than three-fourths in value of the territory to be excluded, that the territory petitioned to be excluded is within the corporate limits and on the border thereof, and that the granting of said petition will be to the best interest of such city or town and the inhabitants thereof and will not materially mar the symmetry of such city or town, the city or town clerk of such city or town shall forthwith cause a notice to be published in the newspaper nearest such territory petitioned to be excluded, at least once a week for 2 successive weeks.

History: En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).

7-2-4806. Contents of notice — protest period. The notice shall be to the effect that:

(1) such resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of such notice, such city or town clerk will receive from the owners of the territory proposed to be excluded expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of such city or town by the exclusion of the territory petitioned to be excluded.

History: En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).

7-2-4807. Hearing on question of exclusion — resolution of exclusion. (1) The clerk shall, at the next regular meeting of the city or town council after expiration of the 20 days, lay before the same all communications in writing so received by him for its consideration, and if after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town shall be altered so as to exclude the territory described in said petition. Said resolution shall also describe the streets, avenues, alleys, and public places in said excluded territory which are to be vacated and abandoned.

(2) Said resolution shall become effective 30 days after its passage and approval, and thereafter the boundary of said city or town shall be as set forth in said resolution.

(3) Such resolution shall not be finally adopted by such council after written disapproval by a majority of the owners in value of the territory proposed to be excluded or after written disapproval or protest by a majority of the owners in value of property within the corporate limits of said city or town immediately adjacent and contiguous to the territory sought to be excluded.

History: (1), (3)En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; Sec. 11-502, R.C.M. 1947; (2)En. Sec. 3, Ch. 33, L. 1927; re-en. Sec. 4979.3, R.C.M. 1935; Sec. 11-503, R.C.M. 1947; R.C.M. 1947, 11-502(part), 11-503(part).

7-2-4808. Resolution and revised municipal map to be filed. (1) Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of said city or town, together with a map showing the corporate limits of said city or town as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said city or town is located.

(2) Upon the filing of the certified copy of the resolution, all such streets, avenues, alleys, and public places to be abandoned or vacated, unless expressly excepted in said resolution, shall be deemed to be vacated and abandoned and the title thereto shall revert to the owners of the adjacent property.

History: (1) En. Sec. 3, Ch. 33, L. 1927; re-en. Sec. 4979.3, R.C.M. 1935; Sec. 11-503, R.C.M. 1947; (2)En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; Sec. 11-502, R.C.M. 1947; R.C.M. 1947, 11-502(part), 11-503(part).

7-2-4809. Liability of excluded territory for existing indebtedness. Such alteration shall not relieve any territory excluded from the limits of a city or town from its liability on account of any outstanding bonded indebtedness of such city or town or any indebtedness of any improvement district of which the excluded territory is a part, existing at the time of the passage of such resolution.

History: En. Sec. 4, Ch. 33, L. 1927; re-en. Sec. 4979.4, R.C.M. 1935; R.C.M. 1947, 11-504.

7-2-4810. Jurisdiction of municipality to levy tax to pay existing indebtedness. For the purpose of levying any tax or assessment necessary for the collection of any of the indebtedness specified in 7-2-4809, the territory so excluded shall be and remain under the jurisdiction of such city or town.

History: En. Sec. 5, Ch. 33, L. 1927; re-en. Sec. 4979.5, R.C.M. 1935; R.C.M. 1947, 11-505.

Part 49

Disincorporation of Municipalities

Part Compiler's Comments

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . Title 7, chapter 2, part 49 . . . are transferred to the department of administration."

7-2-4901. Automatic disincorporation. (1) If the governing body of any city or town incorporated under the laws of Montana ceases to exist or fails to function for a period of 2 years, the city or town shall be disincorporated in the manner set forth in this part.

(2) (a) In cases where a city or town has been disincorporated by virtue of the provisions of subsection (1), the county commissioners shall file in their office an order that the disincorporation be granted. This order takes effect within 60 days following the date of the order.

(b) A certified copy of the order shall be sent to the state officials named in 7-2-4906.

History: (1)En. Sec. 1, Ch. 99, L. 1973; Sec. 11-308, R.C.M. 1947; (2)En. Sec. 7, Ch. 99, L. 1973; Sec. 11-314, R.C.M. 1947; R.C.M. 1947, 11-308, 11-314.

7-2-4902. Disincorporation by election. (1) Any city or town may be disincorporated in the manner hereafter provided.

(2) If the registered electors of a city or town equal in number to 20% of the number of electors voting at the last regular municipal election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town, or if the city governing body by a two-thirds vote of all its members resolves to disincorporate, then the board shall order, within 60 days, that a special election be held within the city or town on the question of disincorporating the city or town. The day for holding the election shall be not less than 60 days or more than 120 days after the board orders the election.

History: En. Sec. 2, Ch. 99, L. 1973; R.C.M. 1947, 11-309(1), (2); amd. Sec. 296, Ch. 571, L. 1979; amd. Sec. 1, Ch. 504, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or if the city governing body by a two-thirds vote of all its members resolves to disincorporate, then" near the middle of (2).

7-2-4903. Notice of election on question of disincorporation. Notice of the election provided for in 7-2-4902 shall be published as provided in 13-1-108.

History: En. Sec. 2, Ch. 99, L. 1973; R.C.M. 1947, 11-309(3); amd. Sec. 297, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-2-4904. Details of election on disincorporation. (1) The election shall be conducted in the same manner as a regular city or town election. The election returns shall be made and canvassed in the same manner as are general election returns.

(2) The form of the ballot shall be:

☐ FOR the disincorporation of .... (insert name of city or town)

☐ AGAINST the disincorporation of .... (insert name of city or town).

History: (1)En. Sec. 4, Ch. 99, L. 1973; Sec. 11-311, R.C.M. 1947; (2)En. Sec. 3, Ch. 99, L. 1973; Sec. 11-310, R.C.M. 1947; R.C.M. 1947, 11-310, 11-311; amd. Sec. 298, Ch. 571, L. 1979.

7-2-4905. Effect of insufficient vote to disincorporate. If it is found by the canvass of the votes that less than 60% of the votes cast were in favor of disincorporation, the county commissioners shall declare the petition for disincorporation denied, in which case no other election may be held on the question of disincorporating said city or town until after the expiration of 2 years from the date of the election.

History: En. Sec. 5, Ch. 99, L. 1973; R.C.M. 1947, 11-312.

7-2-4906. Effect of sufficient vote to disincorporate. (1) In case the canvass reveals that 60% or more of all the votes cast were in favor of disincorporation, the county commissioners shall, under their hands, make and file in their office and cause to be entered upon their proceedings an order that the petition for disincorporation be granted and declaring that the city or town is disincorporated. The order takes effect within 60 days following the date of the order.

(2) A certified copy of the order shall be sent to the secretary of state and the head of the department of administration.

History: En. Sec. 6, Ch. 99, L. 1973; amd. Sec. 9, Ch. 213, L. 1975; R.C.M. 1947, 11-313; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (2).

7-2-4907 through 7-2-4910 reserved.

7-2-4911. Certification of financial condition. (1) Upon receiving a certified copy of the order of disincorporation, the director of the department of administration shall certify a current statement of the financial condition of the disincorporating city or town to the board of county commissioners.

(2) The statement shall include but not be limited to:

(a) a determination of all assets of the city or town, including any current or delinquent utility accounts and/or taxes receivable; and

(b) a statement of all city or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness.

History: En. Sec. 8, Ch. 99, L. 1973; amd. Sec. 10, Ch. 213, L. 1975; R.C.M. 1947, 11-315(part); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1).

7-2-4912. Management of unencumbered cash. (1) Under the supervision of the director of the department of administration or his agent, the city treasurer or town clerk shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury. The check shall be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated.

(2) The county treasurer shall immediately place said money in a special fund, to be drawn upon as provided in this part.

History: **En. Sec. 8, Ch. 99, L. 1973; amd. Sec. 10, Ch. 213, L. 1975; R.C.M. 1947, 11-315(part); amd. Sec. 7, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1).

7-2-4913. Release of public property to county commissioners. Except as provided in 7-2-4914, upon the disincorporation of a city or town, every public officer of the city shall immediately turn over all public property of every nature and description in his possession to the board of county commissioners of the county in which the city or town is situated.

History: **En. Sec. 9, Ch. 99, L. 1973; R.C.M. 1947, 11-316(part).**

7-2-4914. Disposition of city court records. Notwithstanding the provisions of 7-2-4913, all court records of the city court, if any, shall be transferred to the nearest justice of the peace. The justice of the peace has the authority to execute and complete all unfinished business. All reports and remittances of fines and forfeitures are made in the same manner as that prescribed for justices of the peace.

History: **En. Sec. 9, Ch. 99, L. 1973; R.C.M. 1947, 11-316(part).**

7-2-4915. Effect of disincorporation on prior legal rights. The disincorporation of a city or town does not invalidate or affect any right, penalty, or forfeiture accruing to the city or town or invalidate or affect any contract entered into or imposed upon the corporation, but all the contracted indebtedness and obligations remain unimpaired by reason of the disincorporation of the city or town.

History: **En. Sec. 10, Ch. 99, L. 1973; R.C.M. 1947, 11-317(part).**

7-2-4916. Payment of debts and collection of receivables of disincorporated municipality. (1) The board of county commissioners of the county succeeding the disincorporated city or town shall provide for:

(a) the payment and discharge in good faith of all the indebtedness and obligations according to the tenor of the contract or indenture agreement by which they were contracted or the indebtedness incurred; and

(b) the collection of any indebtedness due the city or town.

(2) All instruments for the repayment of indebtedness are drawn by order of the board on the fund provided in 7-2-4912.

History: **En. Sec. 10, Ch. 99, L. 1973; R.C.M. 1947, 11-317(part).**

7-2-4917. Procedure to collect receivables. (1) The board of county commissioners shall make provisions for the collection of the amounts due a corporation and for the closing up of its affairs, and any act or acts necessary for that purpose and not otherwise provided shall, upon order of the board, be performed by the officer or officers performing similar duties for the county as if it had been performed by the proper officer of the city or town before disincorporation.

(2) The county shall succeed to and possess all rights of the corporation to indebtedness and has power to sue for or otherwise collect any debts in the name of the county.

History: En. Sec. 13, Ch. 99, L. 1973; R.C.M. 1947, 11-320.

7-2-4918. Tax levy in the event of insolvency. (1) If, at any time after the disincorporation of a city or town, it is found that there is not sufficient money in the treasury to the credit of the special fund of 7-2-4912 with which to pay any indebtedness of the corporation, the board of county commissioners has the power and it is its duty to levy and collect from the territory formerly included within the city or town a tax or taxes sufficient in amount to pay the indebtedness of the corporation as the same shall become due.

(2) The tax or taxes, assessments, and collections shall be made in the same manner and at the same time that other taxes of the county are levied and collected and are an additional tax upon the property included within said territory or portions thereof for the payment of said debts.

(3) All money paid into the county treasury under the provisions of this part shall be placed to the credit of the special fund.

History: En. Sec. 11, Ch. 99, L. 1973; R.C.M. 1947, 11-318.

7-2-4919. Management of surplus assets deposited to special fund. If, after payment of the debts of the corporation and the liquidation, where possible, of tangible assets, any surplus shall remain in the hands of the county treasurer to the credit of the special fund, money remaining shall be transferred to the county general fund. Nothing in this section is intended to conflict with the provisions of 7-2-4915 and 7-2-4916.

History: En. Sec. 12, Ch. 99, L. 1973; R.C.M. 1947, 11-319.

7-2-4920. Payment of costs and expenses from special county fund. All costs and expenses of ascertaining information and all other costs and expenses incurred by the board of county commissioners in the execution of the powers and duties of managing the affairs of the disincorporated city or town provided for in this part shall be paid out of the special fund in the county treasury.

History: En. Sec. 14, Ch. 99, L. 1973; R.C.M. 1947, 11-321.

CHAPTER 3

ALTERNATIVE FORMS OF LOCAL GOVERNMENT

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Part 1

General Provisions

7-3-101. Compliance with constitution. (1) The purpose of parts 1 through 7 is to comply with Article XI, section 3(1), of the Montana constitution, which provides: "The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

(2) Parts 1 through 7 establish the alternative forms of government for cities, towns, counties, and consolidated governments. These parts shall be liberally construed to facilitate the adoption of a form of local government.

History: En. 47A-3-201 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-201; amd. Sec. 1, Ch. 262, L. 1979.

7-3-102. Adoption of alternative form. Each local government in the state shall adopt one of the alternative forms of government provided for in parts 1 through 7, including one of each suboption authorized:

(1) the commission-executive form (which may also be called the council-executive, the council-mayor, or the commission-mayor form);

(2) the commission-manager form (which may also be called the council-manager form);

(3) the commission form;

(4) the commission-chairman form;

(5) the town meeting form; or

(6) the charter form.

History: En. 47A-3-202 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-202.

7-3-103. Amendment of self-government charter or adopted alternative form of government. (1) An amendment to a self-government charter or an adopted alternative form of government may only be made by submitting the question of amendment to the electors of the local government. To be effective, a proposed amendment must receive an affirmative vote of a majority of the electors voting on the question. An amendment approved by the electors becomes effective on the first day of the local government fiscal year following the fiscal year of approval unless the question submitted to the electors provides otherwise.

(2) An amendment to a self-government charter or an adopted alternative form of government may be proposed by initiative by petition of 15% of the electors of the local government or by ordinance enacted by the governing body. The question on amendment of a charter or an adopted alternative form of government shall be submitted to the electors as soon as possible after the submission of a petition or enactment of a resolution, either at a regularly scheduled election or at a special election.

(3) The local government, by ordinance, may provide procedures for the submission and verification of initiative petitions.

History: En. 47A-3-209 by Sec. 4, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-209.

7-3-104. Limitation on change in alternative form. The electors of any unit of local government which has adopted a new alternative form of local government may not vote on the question of changing the form of local government until 3 years after the new alternative form of local government becomes effective, but the voters may vote on amendments to the alternative form or service or functional transfers.

History: En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(part).

7-3-105. Plan of government. The approved plan filed with the secretary of state pursuant to subsection (3)(a) of section 14, Chapter 513, Laws of 1975, shall be the official plan and shall be a public record open to inspection of the public and judicially noticeable by all courts.

History: En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(3)(b).

7-3-106. Effect of change in government. (1) All ordinances in effect at the time the new form of government becomes effective shall continue in effect until repealed or amended in the manner provided by law.

(2) The adoption of a new form of government shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

History: En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(part).

7-3-107 through 7-3-110 reserved.

7-3-111. Statutory basis for elected county official government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the elected county official form of government shall be governed by the following sections:

(a) 7-3-401;
(b) 7-3-402;
(c) 7-3-412(3);
(d) 7-3-413(1);
(e) 7-3-414(1);
(f) 7-3-415(2);
(g) 7-3-416(2);
(h) 7-3-417(2);
(i) 7-3-418;
(j) 7-3-432(1);
(k) 7-3-433(1);
(l) 7-3-434(1);
(m) 7-3-435(1);
(n) 7-3-436(1);
(o) 7-3-437(1);
(p) 7-3-438(1);
(q) 7-3-439(1);
(r) 7-3-440(1);
(s) 7-3-441(1);
(t) 7-3-442(1) if the county has elected an auditor;
(u) 7-3-442(6) if the county has not elected an auditor.

(2) This form has terms of 4 years for all elected officials except commissioners who are elected to 6-year terms. The commission consists of three members.

History: En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(3).

7-3-112. Statutory basis for county manager government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the county manager form of government shall be governed by the following sections:

(a) 7-3-301;
(b) 7-3-303;
(c) 7-3-304;
(d) 7-3-305;
(e) 7-3-312(2);
(f) 7-3-313(1) or (2);
(g) 7-3-314(2);
(h) 7-3-315(1);
(i) 7-3-316(2);
(j) 7-3-317(2);
(k) 7-3-318.

(2) Commissioners are elected to 6-year terms. The size of the commission shall be established by ordinance, but it may not exceed five members.

History: En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(4).

7-3-113. Statutory basis for municipal council-mayor government. (1) For the purpose of determining the statutory basis of existing units of local government, each unit of local government organized under the general statutes authorizing the municipal council-mayor form of government, which does not adopt a new form, shall be governed after May 2, 1977 by the following sections:

(a) 7-3-201;
(b) 7-3-202(1);
(c) 7-3-203;
(d) 7-3-212(2);
(e) 7-3-213(3);
(f) 7-3-214(2);
(g) 7-3-215(2);
(h) 7-3-216(2);
(i) 7-3-217(1);
(j) 7-3-218(2);
(k) 7-3-219(1);
(l) 7-3-220(1);
(m) 7-3-221(3);
(n) 7-3-222(2);
(o) 7-3-223(2).

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed 20 members.

History: En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(1).

7-3-114. Statutory basis for municipal commission-manager government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the municipal commission-manager form of government shall be governed by the following sections:

(a) 7-3-301;
(b) 7-3-302(1);
(c) 7-3-303;
(d) 7-3-304;
(e) 7-3-305;
(f) 7-3-312(3);
(g) 7-3-313(1);
(h) 7-3-314(2);
(i) 7-3-315(2);
(j) 7-3-316(2);
(k) 7-3-317(2);
(l) 7-3-318.

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed five members.

History: **En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(2).**

7-3-115 through 7-3-120 reserved.

7-3-121. Purpose. The purpose of 7-3-121 through 7-3-161 is to provide procedures for alteration of existing forms of local government.

History: **En. Sec. 1, Ch. 675, L. 1979.**

Compiler's Comments

Codification. Sec. 27, Ch. 675, L. 1979, provided: "It is intended that sections 1 through 27 be codified as an integral part of Title 7, chapter 3, part 1, and the provisions of Title 7, chapter 3, apply to sections 1 through 27." This material is codified as 7-3-121 through 7-3-161.

Severability. Sec. 28, Ch. 675, L. 1979, was a severability section.

Commissioner correction. The free joint conference committee report on HB 851 (Ch. 675, L. 1979) deleted a section of the original bill but did not alter the internal references within the bill accordingly. The Code Commissioner, 1979, has corrected these internal references in sections 7-3-125, 7-3-143, 7-3-144, 7-3-145, and 7-3-149.

7-3-122. Definitions. As used in 7-3-121 through 7-3-161, unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in Title 7, chapter 34, part 21;

(g) a flood control and water conservation district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or

(i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the

county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 7.

(4) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(5) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

(6) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services.

History: **En. Sec. 2, Ch. 675, L. 1979; amd. Sec. 20, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "parts 1 through 7" for "parts 1 through 6" at the end of (3).

7-3-123. Alteration of existing forms of local government. An alteration of an existing form of local government may be proposed by a petition of the electors.

History: **En. Sec. 3, Ch. 675, L. 1979.**

7-3-124. Election procedure. Except as otherwise provided in 7-3-121 through 7-3-161, each election under 7-3-121 through 7-3-161 is conducted in the same manner as an election involving ballot issues or of local officials.

History: **En. Sec. 4, Ch. 675, L. 1979.**

7-3-125. Petition for alteration. (1) A petition for the alteration of an existing form of local government may be presented to the governing body of the local government. The petition must meet the requirements of 7-3-142 through 7-3-145.

(2) The petition must be signed by at least 15% of the electors of the local government registered at the last general election, and upon receipt of the petition the governing body shall call an election, as provided for in 7-3-149 through 7-3-151, on the proposed alteration. Whenever county-municipal consolidation is proposed, the petition must be signed by at least 15% of the electors residing within the municipality or municipalities proposed to be consolidated and 15% of the electors residing in the remainder of the county.

History: **En. Sec. 5, Ch. 675, L. 1979.**

7-3-126 through 7-3-140 reserved.

7-3-141. Permissible recommendations. (1) A petition proposing to alter an existing form of county government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter;

(d) recommend municipal-county consolidation or amendments to an existing consolidation; or

(e) in cooperation with a similar petition calling for an election on county merger circulated in an adjoining county, recommend county merger.

(2) A petition proposing to alter an existing form of municipal government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter; or

(d) recommend disincorporation.

History: En. Sec. 6, Ch. 675, L. 1979; amd. Sec. 21, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "parts 1 through 6" for "parts 1 through 7" at the end of (2)(b).

7-3-142. Requirements for petition. A petition proposing an alteration of an existing form of local government must contain:

(1) a certificate containing the "plan of government" of the existing form of local government;

(2) a certificate containing the "plan of government" of the proposed new form of local government or amendments to the existing plan;

(3) a certificate containing the "plan of apportionment" of commissioner districts if districts are contained in the "plan of government"; and

(4) a comparison of the existing plan and proposed plan of local government, including, if desired, a statement of the strengths and weaknesses of the existing and proposed plans of local government, information that supports the adoption of the proposed plan, and information that supports retention of the present plan.

History: En. Sec. 7, Ch. 675, L. 1979.

7-3-143. Special requirements if consolidation recommended. (1) Whenever county-municipal consolidation is recommended, a petition, in addition to the material required in 7-3-142, must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of the local governments consolidated under its proposal;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and nonconsolidated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and nonconsolidated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

(3) Whenever amendments to an existing consolidation plan are recommended, a petition must contain a certificate containing amendments to the consolidation plan.

History: **En. Sec. 8, Ch. 675, L. 1979.**

7-3-144. Special requirements if county merger recommended. (1) Whenever county merger is recommended, a petition, in addition to the material required by 7-3-142, must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative plan;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

History: **En. Sec. 9, Ch. 675, L. 1979.**

7-3-145. Special requirements if municipal disincorporation recommended. Whenever municipal disincorporation is recommended, a petition, in addition to the material required by 7-3-142, must contain:

(1) a certificate of disincorporation instead of a plan of government; and

(2) a recommended plan of disincorporation.

History: **En. Sec. 10, Ch. 675, L. 1979.**

7-3-146. Filing of petitions. (1) Two copies of a petition shall be filed with the department of administration.

(2) One copy of a petition shall be filed with the local government records administrator.

(3) The filings required by this section shall be done within 45 days of submission of the petition.

History: **En. Sec. 11, Ch. 675, L. 1979; amd. Sec. 7, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-3-146 . . . are transferred to the department of administration."

7-3-147. Availability of petitions. (1) Sufficient copies of a petition proposing alterations to an existing form of local government must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than 30 days prior to an election on the recommendations if such an election is to be held. The local government may distribute copies of a petition to the electors or residents of the local government.

(2) The cost of preparing the copies needed to meet the requirements of this section shall be borne by the affected local government.

History: **En. Sec. 12, Ch. 675, L. 1979.**

7-3-148. Publication of summary and comparison. (1) A summary of the recommendations contained in a petition proposing alteration of an existing form of local government must be published at least twice in a newspaper of general circulation in the local government. Whenever an election on the recommendations is to be held, publication must be made during the 2 weeks preceding the election.

(2) The summary must contain a description of the recommendations, a comparison of the existing and proposed forms of government, and a list of locations where the full proposal may be seen or obtained.

(3) The cost of publication required by this section shall be borne by the affected local government.

History: **En. Sec. 13, Ch. 675, L. 1979.**

7-3-149. Election on alternative form. (1) The governing body shall call a special election on the question of an alternative form of government to be held within 120 days of the date of filing with the records administrator under 7-3-146. The special election may be held in conjuction with any other election. The records administrator shall prepare and print notices of the special election.

(2) The cost of the election shall be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question shall be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions shall be submitted to the electors in the counties affected and requires a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form.

History: **En. Sec. 14, Ch. 675, L. 1979.**

7-3-150. General ballot requirements. (1) The question of adopting an alteration of an existing form of government proposed by petition shall be submitted to the electors in substantially the following form:

Vote for one:

☐ FOR adoption of the (self-government charter, amendment to an existing charter, or plan of government) proposed for (insert name of local government) proposed by petition of the people.

☐ FOR the existing form of government.

(2) The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.

History: **En. Sec. 15, Ch. 675, L. 1979.**

7-3-151. Treatment of suboptions for alternative forms. (1) No petition recommendation may involve more than three separate suboptions, and no suboption may contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government.

(2) A proposed plan shall be submitted to the voters as a single question, except that the suboptions within the alternative plan of local government authorized in Title 7, chapter 3, parts 1 through 6, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption shall be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

☐ Shall be elected for a term of 4 years.

☐ Shall be appointed for a term of 4 years by the chairman of the local governing body.

History: **En. Sec. 16, Ch. 675, L. 1979; amd. Sec. 22, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "parts 1 through 6" for "parts 1 through 7" in (2).

7-3-152. Effect of adoption of new form of government. The adoption of a new plan of government does not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

History: **En. Sec. 17, Ch. 675, L. 1979.**

7-3-153. Filing of approved plan. (1) A copy of the existing or proposed plan of government ratified by the voters and any apportionment plan or consolidation or merger plan shall be certified by the chairman of the governing body and filed with the department of administration, the county records administrator, and the municipal records administrator if it is a municipal plan.

(2) The approved plan filed with the department of administration is the official plan and is a public record open to inspection by the public and judicially noticeable by all courts.

History: **En. Sec. 18, Ch. 675, L. 1979; amd. Sec. 7, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1) and (2).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-3-153 . . . are transferred to the department of administration."

7-3-154. Judicial review. Judicial review to determine the validity of the procedures whereby any charter or alternative plan of government is adopted may be initiated by petition in district court of 10 or more registered voters of the local government brought within 60 days after the election at which the charter or plan of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by 7-3-121 through 7-3-161 and the validity of the manner in which the charter or plan of government was approved is conclusively presumed. It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

History: **En. Sec. 19, Ch. 675, L. 1979.**

7-3-155. Three-year moratorium. Unless the constitution requires otherwise, the electors of any unit of local government which has voted upon the question of changing the form of local government, charter, or consolidation plan or upon the question of amending the alternative form, charter, or consolidation plan may not vote on the question of changing or amending the form of local government for 3 years.

History: **En. Sec. 20, Ch. 675, L. 1979.**

7-3-156. Effective date of alternative plan or amendment. (1) An alternative plan of local government approved by the electors takes effect when the new officers take office, except as otherwise provided in any charter or consolidation plan. A consolidation or merger plan adopted by the electors takes effect in the same manner.

(2) Provisions creating offices and establishing qualifications for office under any apportionment plan become effective immediately for the purpose of electing officials.

(3) An amendment to an existing plan of government becomes effective at the beginning of the local government's fiscal year commencing after the election results are officially declared.

History: **En. Sec. 21, Ch. 675, L. 1979.**

7-3-157. General transition provisions. (1) The governing body shall prepare an advisory plan for orderly transition to a new plan of local government. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, departments, and agencies.

(2) The governing body of a local government may enact and enforce ordinances to bring about an orderly transition to the new plan of government, including transfer of powers, records, documents, properties, assets, funds, liabilities, or personnel. These ordinances are to be consistent with the approved plan and necessary or convenient to place it into full effect. Whenever a question arises concerning transition which is not provided for, the governing body may provide for the transition by ordinance, rule, or resolution not inconsistent with law.

History: **En. Sec. 22, Ch. 675, L. 1979.**

7-3-158. Transition provisions affecting personnel. (1) The members of the governing body holding office on the date the new plan of government is adopted by the electors of the local government continue in office and in the performance of their duties until the governing body authorized by the plan has been elected and qualified, whereupon the prior governing body is abolished.

(2) All other employees holding offices or positions, whether elective or appointive, under the government of the county or municipality continue in the performance of the duties of their respective offices and positions until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions.

(3) A charter or a petition proposing an alteration to an existing form of local government may provide that existing elected officers shall continue in office until the end of the term for which they were elected or may provide that existing elected officers shall be retained as local government employees until the end of the term for which they were elected, and their salaries may not be reduced.

History: **En. Sec. 23, Ch. 675, L. 1979; amd. Sec. 23, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "or resolution" after "petition" in (3).

7-3-159. Treatment of existing ordinances and resolutions. (1) All ordinances and resolutions in effect at the time the new form of government becomes effective continue in effect until repealed or amended in the manner provided by law.

(2) Within 2 years after ratification of a consolidation plan, the governing body of the consolidated local government shall revise, repeal, or reaffirm all

rules, ordinances, and resolutions in force within the participating county and municipalities at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation remains in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

History: En. Sec. 24, Ch. 675, L. 1979.

7-3-160. Election of new officials. (1) Within 20 days after an election at which the new plan of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form of government. The elections for officials may be held in conjunction with any other election.

(2) The order shall specify a date for the primary election not more than 120 days or less than 20 days after the election approving the new form and a date for the general election 60 days after the primary.

History: En. Sec. 25, Ch. 675, L. 1979.

7-3-161. Organization of new governing body. (1) The first meeting of a new governing body for a new plan of government shall be held at 10 a.m., 60 days after the election of the new officers. At that time, newly elected members shall take the oath of office prior to assuming the duties of office.

(2) If the terms of the commissioners are to be overlapping, they shall draw lots to establish their respective terms of office.

History: En. Sec. 26, Ch. 675, L. 1979.

Part 2

Commission-Executive Government

7-3-201. Commission-executive form. The commission-executive form (which may be called the council-executive, the council-mayor, or the commission-mayor form) consists of an elected commission (which may be referred to as the council) and one elected executive (who may be referred to as the mayor) who is elected at large.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(1).

7-3-202. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(4).

7-3-203. Duties of executive. The executive shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform duties required of him by law, ordinance, or resolution;

(3) administer affairs of the local government;
(4) carry out policies established by the commission;
(5) recommend measures to the commission;
(6) report to the commission on the affairs and financial condition of the local government;
(7) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;
(8) report to the commission as the commission may require;
(9) attend commission meetings and may take part in discussions;
(10) execute the budget adopted by the commission;
(11) appoint, with the consent of the commission, all members of boards; except the executive may appoint without the consent of the commission temporary advisory committees established by the executive.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(2).**

7-3-204 through 7-3-210 reserved.

7-3-211. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-212 through 7-3-224.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(part).**

7-3-212. Administrative assistants. The executive:

(1) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the executive; or
(2) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the executive.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(a).**

7-3-213. Supervision of personnel. The executive may:

(1) appoint and remove all employees of the local government;
(2) appoint and remove, with the consent of a majority of the commission, all employees of the local government;
(3) appoint, with the consent of a majority of the commission, all department heads and remove department heads and may appoint and remove all other department employees; or
(4) appoint and remove, with the consent of a majority of the commission, all department heads and appoint and remove all other employees of the local government.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(b).**

7-3-214. Veto power. The executive may:

(1) veto ordinances and resolutions, subject to override by a majority plus one of the whole number of the commission;

(2) veto ordinances and resolutions, subject to override by a two-thirds vote of the commission; or

(3) sign all ordinances and resolutions with no veto power.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(c).

7-3-215. Preparation of budget. The executive may:

(1) prepare the budget and present it to the commission for adoption; or

(2) prepare the budget in consultation with the commission and department heads.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(d).

7-3-216. Administrative supervision and control. The executive may:

(1) exercise control and supervision of the administration of all departments and boards; or

(2) exercise control and supervision of all departments and boards to the degree authorized by ordinance of the commission.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(e).

7-3-217. Financial officer. A financial officer (who may be called the treasurer):

(1) shall be elected;

(2) shall be appointed by the executive with the consent of the council;

(3) shall be selected as provided by ordinance; or

(4) may, at the discretion of the commission, be selected as provided by ordinance.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(f).

7-3-218. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(g).

7-3-219. Type of election. Local government elections shall be conducted on a:

(1) partisan basis as provided in this title; or

(2) nonpartisan basis as provided in this title.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(h).

7-3-220. Chairman of commission. The commission shall have a chairman who shall be:

(1) elected by the members of the commission from their own number for a term established by ordinance; or

(2) selected as provided by ordinance.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(i).

7-3-221. Presiding officer of commission. The presiding officer of the commission shall be:

(1) the chairman of the commission, who may vote as other members of the commission;

(2) the executive, who may vote as the commissioners;

(3) the executive, who shall decide all tie votes of the commission but shall have no other vote (the chairman of the commission shall preside if the executive is absent); or

(4) the executive, but he may not vote.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(j).

7-3-222. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(k).

7-3-223. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(l).

7-3-224. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(m).

Part 3

Commission-Manager Government

7-3-301. Commission-manager form. The commission-manager form (which may be called the council-manager form) consists of an elected commission (which may be called the council) and a manager appointed by the commission, who shall be the chief administrative officer of the local government. The manager shall be responsible to the commission for the administration of all local government affairs placed in his charge by law, ordinance, or resolution.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(1).

7-3-302. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(7).

7-3-303. Appointment of manager. The manager shall be appointed by the commission for an indefinite term on the basis of merit only and removed only by a majority vote of the whole number of the commission.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(2).

7-3-304. Duties of manager. The manager shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform the duties required of him by law, ordinance, or resolution;

(3) administer the affairs of the local government;

(4) direct, supervise, and administer all departments, agencies, and offices of the local government unit except as otherwise provided by law or ordinance;

(5) carry out policies established by the commission;

(6) prepare the commission agenda;

(7) recommend measures to the commission;

(8) report to the commission on the affairs and financial condition of the local government;

(9) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(10) report to the commission as the commission may require;

(11) attend commission meetings and may take part in the discussion, but he may not vote;

(12) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;

(13) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance;

(14) appoint members of temporary advisory committees established by the manager.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part).

7-3-305. Employees of commission-manager government. (1) Employees appointed by the manager and his subordinates shall be administratively responsible to the manager.

(2) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of his subordinates are empowered to appoint.

(3) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager solely through the manager, and neither the commission nor its members may give orders to any such employee, either publicly or privately.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part).**

7-3-306 through 7-3-310 reserved.

7-3-311. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-312 through 7-3-318.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part).**

7-3-312. Appointment to boards. All members of boards, other than temporary advisory committees established by the manager, shall be appointed by:

(1) the chairman with the consent of the commission; or

(2) the manager with the consent of the commission; or

(3) the commission.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(a).**

7-3-313. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(b).**

7-3-314. Type of election. Local government elections shall be conducted on a:

(1) partisan basis as provided in this title; or

(2) nonpartisan basis as provided in this title.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(c).**

7-3-315. Chairman of commission. The chairman of the commission shall be:

(1) elected by the members of the commission from their own number for a term established by ordinance;

(2) elected by the qualified electors for a term of office; or

(3) selected as provided by ordinance.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(d).

7-3-316. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(e).

7-3-317. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(f).

7-3-318. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(g).

Part 4

Commission Government

7-3-401. Commission form. The commission form consists of an elected commission (which may also be called the council) and other elected officers as provided in this part. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission. The commission shall appoint the heads of departments and other employees, except for those appointed by other elected officials. Cities and towns which adopt this form may distribute by ordinance the executive and administrative powers and duties into departments headed by individual commissioners.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(1).

7-3-402. Nature of government. Local governments that adopt this form shall have general government powers.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(4).

7-3-403. Role of chairman of commission. The chairman of the commission, who may be referred to as the mayor, shall be the presiding officer of the commission. All members of boards and committees shall be appointed by the chairman with the consent of the commission. The chairman shall be recognized as the head of the local government unit and may vote as other members of the commission.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-404 through 7-3-410 reserved.

7-3-411. General structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-412 through 7-3-418.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-412. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(a).

7-3-413. Type of election. Local government elections shall be conducted on a:

(1) partisan basis as provided in this title; or

(2) nonpartisan basis as provided in this title.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(b).

7-3-414. Chairman of commission. The chairman of the commission shall be:

(1) elected by the members of the commission from their own number for a term established by ordinance;

(2) selected as provided by ordinance; or

(3) elected directly by the voters for a term established by ordinance.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-415. Administrative assistants. The commission:

(1) shall appoint one or more administrative assistants to assist them in the supervision and operation of the local government; or

(2) may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(d).

7-3-416. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(e).

7-3-417. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(f).

7-3-418. Terms of elected officials. The term of office of elected officials may not exceed 4 years, except the term of office for commissioners in counties adopting the form authorized by Article XI, section 3(2), of the Montana constitution may not exceed 6 years. Terms of office shall be established when the form is adopted by the voters.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(g).

7-3-419 through 7-3-430 reserved.

7-3-431. Additional structural suboptions for county and consolidated governments. In county and consolidated local governments, the plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-432 through 7-3-442. The officers shall have the powers and duties established by ordinance. After the establishment of any office, the commission may consolidate, as provided by law, two or more of the offices.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-432. Legal officer. A legal officer (who may be called the county attorney):

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(a).

7-3-433. Law enforcement officer. A law enforcement officer (who may be called the sheriff):

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(b).

7-3-434. Clerk and recorder. A clerk and recorder:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(c).

7-3-435. Clerk of district court. A clerk of district court:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(d).

7-3-436. Treasurer. A treasurer:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(e).**

7-3-437. Surveyor. A surveyor:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(f).**

7-3-438. Superintendent of schools. A superintendent of schools:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(g).**

7-3-439. Assessor. An assessor:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(h).**

7-3-440. Coroner. A coroner:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(i).**

7-3-441. Public administrator. A public administrator:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(j).

7-3-442. Auditor. An auditor:

(1) shall be elected;

(2) shall be appointed by the local government commission;

(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;

(5) may at the discretion of the commission be selected as provided by ordinance; or

(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(k).

Part 5

Commission-Chairman Government

7-3-501. Commission-chairman form. The commission-chairman form consists of an elected commission (which may also be referred to as the council) and a commission chairman (who may also be referred to as mayor or as president) elected by the members of the commission from their own number and serving at the pleasure of the commission.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part).

7-3-502. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(4).

7-3-503. Role and duties of chairman. The commission chairman shall:

(1) be the presiding officer of the commission, be recognized as the head of the local government unit, have the power to vote as other members of the commission, be the chief executive officer of the local government; and

(2) enforce laws, ordinances, and resolutions;

(3) perform duties required of him by law, ordinance, or resolution;

(4) administer the affairs of the local government;

(5) direct, supervise, and administer all departments, agencies, and offices of the local government except as otherwise provided by law or ordinance;

(6) carry out policies established by the commission;

(7) prepare the commission agenda;

(8) recommend measures to the commission;

(9) report to the commission on the affairs and financial condition of the local government;

(10) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(11) report to the commission as the commission may require;

(12) attend commission meetings and may take part in discussions;

(13) execute the budget adopted by the commission;

(14) appoint, with the consent of the commission, all members of boards and committees; except the chairman may appoint without the consent of the commission temporary advisory committees established by the chairman;

(15) appoint, with the consent of a majority of the commission, all department heads, and the chairman may remove department heads and may appoint and remove all other employees;

(16) prepare the budget and present it to the commission for adoption;

(17) exercise control and supervision over the administration of departments and boards.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part).

7-3-504 through 7-3-510 reserved.

7-3-511. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-512 through 7-3-517.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part).

7-3-512. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(a).

7-3-513. Type of election. Local government elections shall be conducted on a:

(1) partisan basis as provided in this title; or

(2) nonpartisan basis as provided in this title.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(b).

7-3-514. Administrative assistants. The commission chairman:

(1) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the chairman; or

(2) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the chairman.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(c).

7-3-515. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(d).

7-3-516. Size of commission and community councils. The size of the commission, which shall be a number not less than five, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(e).

7-3-517. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(f).

Part 6

Town Meeting Government

7-3-601. Town meeting form. (1) The town meeting form consists of an assembly of the qualified electors of a town (known as a town meeting), an elected town chairman, who shall be a qualified elector, and an optional elected town meeting moderator.

(2) The town meeting form may be adopted only by incorporated cities or towns of less than 2,000 persons, as determined by the most recent decennial census as conducted by the United States bureau of the census unless a more recent enumeration of inhabitants be made by the state, in which case such enumeration shall be used for the purposes of this part. Any unit

of local government which adopts this form may retain it even though its population increases to more than 2,000.

(3) All legislative powers of the town shall vest in the town meeting. The town meeting may enact rules, resolutions, and ordinances.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(1), (2).**

7-3-602. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(11).**

7-3-603. Holding of town meeting. (1) Towns adopting this form shall convene an annual town meeting on the first Tuesday of March. Special town meetings may be called by the town chairman or upon petition of 10% of the qualified electors of the town, but in no case by less than 10 qualified electors.

(2) All qualified electors of the town may attend the town meeting, take part in the discussion, and vote on all matters coming before the town meeting. Others may attend but shall not vote or take part in the discussion except by a majority vote of the town meeting.

(3) A quorum shall consist of at least 10% of the qualified electors of the town, but a higher quorum requirement may be established by a majority vote of the town meeting.

(4) The election of town officials shall be nonpartisan and shall be by a plurality of those qualified electors present and voting. All other voting in the town meeting shall be by a simple majority of those qualified electors present and voting.

(5) Election of officials shall be by secret ballot. Other voting shall be by secret ballot upon the request of at least five members of the town meeting.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(3).**

7-3-604. Meeting agenda. An agenda of the town meeting and a list of all elective and appointive offices to be filled shall be prepared by the town chairman, who shall post notice at least 2 weeks prior to the convening of all annual and special town meetings. Upon written petition of at least 10% of the qualified electors of the town but not less than 10 qualified electors, the town chairman shall insert a particular item or items in the agenda for the next annual or special town meeting. The town meeting agenda may include an item entitled "other business" under which any matter may be considered by the town meeting, except no matter dealing with finance or taxation shall be considered under "other business".

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(4).**

7-3-605. Agenda and conduct of initial town meeting. The first agenda of the first town meeting following the adoption of this form shall be established by the local study commission. At that town meeting the chairman of the local study commisssion shall preside over the election of the presiding officer of the town, after which the presiding officer of the town shall preside.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(10).**

7-3-606. Selection, role, and duties of town chairman. (1) The town meeting shall elect a town chairman for a term of not less than 1 year or more than 2 years. An unexpired term of a town chairman shall be filled at the next annual or special town meeting.

(2) The town chairman shall be the chief executive officer of the town, and he shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the town;

(d) prepare the town meeting agenda;

(e) attend all annual and special town meetings;

(f) recommend measures to the town meeting;

(g) report to the town on the affairs and financial condition of the town;

(h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of the town;

(i) appoint, with the consent of the town meeting, members of all boards and appoint and remove all employees of the town;

(j) prepare the budget and present it to the town meeting for adoption;

(k) exercise control and supervision of the administration of all departments and boards;

(l) carry out policies established by the town meeting.

(3) Compensation of the town chairman shall be established by ordinance but shall not be reduced during the current term of the town chairman.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(5) thru (7).**

7-3-607. Committees. Permanent committees to advise the town chairman and/or the town meeting may be established and dissolved by ordinance. The town chairman may establish temporary committees to advise him.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(8).**

7-3-608 through 7-3-610 reserved.

7-3-611. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-612 and 7-3-613.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(part).**

7-3-612. Town meeting moderator. The town meeting shall:

(1) elect a town meeting moderator for a term of 1 year, who shall be the presiding officer of all annual and special town meetings but who shall have no other governmental powers; or

(2) designate the town chairman as presiding officer of all annual and special town meetings.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(9)(a).**

7-3-613. Adminstrative assistant. (1) The town chairman:

(a) shall appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town; or

(b) may appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town.

(2) The administrative assistant shall be answerable solely to the town chairman, and the town chairman may delegate powers to the administrative assistant at his discretion.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(9)(b).

Part 7

Charter Government

7-3-701. Charter form. (1) The purpose of this part is to comply with Article XI, section 5(1), of the Montana constitution, which provides: "The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body."

(2) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(1), (2).

7-3-702. Nature of government. A charter form of government shall possess self-government powers.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(3).

7-3-703. Charter required. (1) Charter form of government shall be established by a charter which is a written document defining the powers, structures, privileges, rights, and duties of the unit of local government and limitations thereon.

(2) The enumeration of powers in a charter shall not be construed as a limitation or prohibition on the residual or self-governing powers granted by the constitution.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(4), (13).

7-3-704. Legislative body. (1) The charter shall provide for an elected legislative body (called a commission or council) or shall provide for a legislative body comprised of all qualified electors. For elected legislative bodies, the charter shall specify the number of members thereof, their term of office, election on a partisan or nonpartisan basis, the grounds for their removal, and the method for filling vacancies.

(2) The charter shall provide for the nomination and election of commissions:

(a) at large;

(b) by districts in which candidates must reside and which are apportioned by population;

(c) by a combination of districts, in which candidates must reside and which are apportioned by population, and at large; or

(d) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(5), (6).

7-3-705. Officials and personnel. (1) The charter shall specify which official of the local government will be the chief administrative and executive officer, the method of his selection, his term of office (except that it may be at the pleasure of the selecting authority if such officer is not elected by popular vote), the grounds for his removal, and his powers and duties. Notwithstanding the foregoing, the charter may allocate the chief executive and the chief administrative functions among two or more officials specified as above or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.

(2) A charter form of government shall have such officers, departments, boards, commissions, and agencies as are established in the charter, by local ordinance, or required by state law.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(7), (9).

7-3-706. Effective date. The charter shall specify the date on which the charter will take effect, except that provisions may be made for temporary partial effectiveness consistent with an orderly transition of government.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(16).

7-3-707. Other charter provisions. (1) The charter may establish other legislative, administrative, and organizational structures.

(2) The charter may contain prohibitions on the exercise of power by a unit of local government.

(3) The charter may include such provisions as may be necessary to permit an orderly transition to the new form of government.

(4) The listing of charter provisions in this part shall not be construed to prevent the inclusion of additional provisions in charters.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(8), (14), (15), (17).

7-3-708. Limitations on charter provisions. (1) Charter provisions may not conflict with the provisions of part 1, chapter 1, which establish statutory limitations on the powers of self-government units.

(2) Charter forms are subject to state laws establishing election, initiative, and referendum procedures; and charters shall not contain provisions establishing election, initiative, and referendum procedures.

(3) The charter shall not contain provisions establishing or modifying local court systems.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(10) thru (12).

7-3-709. Amendment of charter. A charter may be amended only as provided by state law.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(18).

Parts 8 through 10 reserved

Part 11

City-County Consolidation — Option 1

7-3-1101. City-county consolidation authorized. (1) A county and a city or town within the county may unite to form a single unit of local government under the provisions of this part.

(2) An alternative form of government, including a charter form, for a consolidated unit of government may be submitted to the voters only by those study commissions that have cooperated in the formulation of the plan. A majority vote by each of the affected study commissions is required for the submission of an alternative form of government for a consolidated unit of local government. The affected study commissions submitting a consolidated form shall issue a single joint report and proposal.

(3) An alternative form of government for a consolidated unit of local government does not need to include more than one municipality. A municipality may not be included unless the local government study commission of that municipality participates in the cooperative study and unless its study commission by a majority vote approves the proposed alternative plan for the consolidated government.

(4) This part shall not apply to excluded municipalities, school districts, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(part); amd. Sec. 2, Ch. 262, L. 1979.

7-3-1102. Plan of consolidation. (1) Study commissions proposing consolidation shall prepare, adopt, and submit to the voters a consolidation plan in addition to the alternative form of government. If the commission proposes a charter, the plan may be included in the charter.

(2) The consolidation plan shall:

(a) provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

(b) provide for establishment of service areas;

(c) provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative form;

(d) provide the official name of the consolidated unit of local government;

(e) provide for the transfer, reorganization, abolition, absorption, adjustment of boundaries (and may provide a method for adjusting the boundaries) of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated governments;

(f) include other provisions which the study commission elects to include and which are consistent with state law.

(3) The plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, adjust boundaries, abolish, or

absorb, and provide a method for adjusting the boundaries of such entities with or without referendum requirements.

History: **En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(part).**

7-3-1103. Effect of consolidation. (1) As a political subdivision of the state, such consolidated unit of local government shall have the status of a county and an incorporated municipality for all purposes and shall replace and be the successor of the county and any city or town.

(2) On its effective date, the alternative form of government and consolidation plan operate to dissolve all local governments within the area of consolidation in accordance with their provisions. On the effective date, the separate corporate existence of the county and of each participating city and/or town shall be consolidated and merged into one local government unit under the name selected, designated, and adopted as provided in this chapter. The consolidated local government shall thereupon succeed to, possess, and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns so consolidated and merged.

(3) All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties and cities shall remain in full force with respect to a consolidated local government.

History: **En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(5), (8).**

7-3-1104. General powers of consolidated local governments. A consolidated local government shall have and may exercise all powers that are conferred on counties, cities, or towns by the constitution and laws of the state. The consolidated local government may levy all taxes which counties, cities, and towns are authorized to levy.

History: **En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(6).**

7-3-1105. Rules, ordinances, and resolutions of consolidated unit. Within 2 years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

History: **En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(7).**

Part 12

City-County Consolidation — Option 2

7-3-1201. Authorization for consolidated city-county government. The separate corporate existence and government of any county and of each and every city and town therein may be abandoned and terminated and such county and each and all of the cities and towns therein may be consolidated and merged into one municipal corporation and government under this part and part 13 by proceeding as hereinafter provided.

History: **En. Sec. 1, Ch. 121, L. 1923; re-en. Sec. 5520.1, R.C.M. 1935; R.C.M. 1947, 11-3401.**

7-3-1202. Nature of consolidated government. As a political subdivision of the state, such consolidated municipality shall have the status of a county, and for the purpose of representation in the legislature, as provided by the constitution and laws of this state, and for all other purposes, it shall replace and be the successor of the county and shall be attached to the same judicial district.

History: **En. Sec. 118, Ch. 121, L. 1923; re-en. Sec. 5520.119, R.C.M. 1935; R.C.M. 1947, 11-3559(part).**

7-3-1203. General powers of consolidated government. (1) The inhabitants of every consolidated municipality organized under the provisions of this part and part 13, as its limits are at the time of such organization or as they may be thereafter established as provided by law, shall be a body politic and corporate under the designation and name as adopted at the election providing for such consolidation and merging and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; may contract and be contracted with; may acquire property within or without the boundaries of the municipality for any municipal purpose, in fee simple or lesser interest or estate, by purchase, gift, devise, appropriation, lease, or lease with privilege of purchase and may sell, lease, hold, manage, and control such property as the interest of the municipality may require; may levy and collect such taxes as are authorized by this part or part 13 or by the general laws of the state; and except as otherwise provided in this part and part 13, such municipality shall have and may exercise all other powers that are now or hereafter may be conferred on counties, cities, and towns by the laws of this state.

(2) All powers of the municipality, whether expressed or implied, shall be exercised and enforced in the manner prescribed in this part and part 13 or in the general laws of the state or, when not so prescribed, then as may be prescribed by ordinance or resolution of the commission.

History: **En. Sec. 6, Ch. 121, L. 1923; re-en. Sec. 5520.6, R.C.M. 1935; R.C.M. 1947, 11-3406.**

7-3-1204. Petition for city-county consolidated government — election required. (1) The question of the abandonment and termination of the separate corporate existence and government of a county and of each city and town therein and the consolidation and merging of the existence and government of the county and each of the cities and towns therein into one municipal corporation and government under the provisions of this part and part 13 shall be submitted to the registered electors of the county if a petition is filed in the office of the election administrator of the county, signed by at least 20% of the electors of the county whose names appear on the official register of voters of the county on the date of the filing of the petition, requesting that such question be submitted to the registered electors of the county.

(2) The petition shall be substantially in the form and shall be signed, verified, and filed in the manner prescribed in 7-5-132 through 7-5-137 for

initiative and referendum petitions and shall designate therein the name by which the consolidated government is to be known, which must be either that of the county or of some one of the cities or towns therein.

History: (1)En. Sec. 2, Ch. 121, L. 1923; re-en. Sec. 5520.2, R.C.M. 1935; Sec. 11-3402, R.C.M. 1947; (2)En. Sec. 3, Ch. 121, L. 1923; re-en. Sec. 5520.3, R.C.M. 1935; Sec. 11-3403, R.C.M. 1947; R.C.M. 1947, 11-3402, 11-3403(part); amd. Sec. 3, Ch. 262, L. 1979; amd. Sec. 381, Ch. 571, L. 1979.

7-3-1205. Certification of petition — board action. (1) If the county election administrator shall find that such petition or amended petition so filed is signed by the required number of registered electors, he shall so certify to the board of county commissioners of such county at their next regular meeting.

(2) Such board shall, within 10 days after receiving the election administrator's certificate, order a special election to be held, at which election such question shall be submitted to the registered electors of the county. Such order shall specify the time when such election shall be held, which shall be not less than 90 or more than 120 days from and after the day when such order is made, and the board of county commissioners shall immediately upon making such order issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published in the manner prescribed by 13-1-108.

History: En. Sec. 3, Ch. 121, L. 1923; re-en. Sec. 5520.3, R.C.M. 1935; R.C.M. 1947, 11-3403(part); amd. Sec. 382, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-3-1206. Form of ballot. At such election the ballots to be used shall be printed on plain white paper, shall conform as nearly as possible to the ballots used in general elections, and shall have printed thereon the following:

Shall the corporate existence and government of the county of .... and of each and every city and town therein be consolidated and merged into one municipal corporation and government under the provisions of chapter 121, acts of the eighteenth legislative assembly of the state of Montana, to be known and designated as "city and county of ...."?

☐ YES.

☐ NO.

History: En. Sec. 4, Ch. 121, L. 1923; re-en. Sec. 5520.4, R.C.M. 1935; R.C.M. 1947, 11-3404(part).

7-3-1207. Conduct of election. Such election shall be conducted, vote returned and canvassed, and result declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 4, Ch. 121, L. 1923; re-en. Sec. 5520.4, R.C.M. 1935; R.C.M. 1947, 11-3404(part).

7-3-1208. Election of commission upon favorable vote. (1) If the majority of the votes cast at such election shall be in favor of such consolidation and merging, the board of county commissioners of such county must, within 2 weeks after such election returns have been canvassed, order a special election to be held for the purpose of electing the number of members of the commission to which such consolidated municipality shall be entitled. This order shall specify the time when such election shall be held, which shall be not less than 90 or more than 120 days after the day when such order is made; provided, however, that if any general election is to be held in such county after 3 months but within 6 months from the date of the making of such order, then such order shall require such special election to be held at the same time as such general election. The board of county commissioners, immediately upon making such order, shall issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published in the manner prescribed by 13-1-108.

(2) No primary election shall be held for the purpose of nominating candidates for members of the commission hereinafter provided for, to be voted for at such special election, but such candidates shall be nominated directly by petition which shall be in substantially the same form and be signed by the same number of signers as hereinafter required for primary nominating petitions. Such election shall be conducted, vote returned and canvassed, and result declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 5, Ch. 121, L. 1923; re-en. Sec. 5520.5, R.C.M. 1935; R.C.M. 1947, 11-3405; amd. Sec. 383, Ch. 571, L. 1979.

7-3-1209. Resolution declaring creation of consolidated government. (1) At the first meeting of the commission whose members are first elected under the provisions of this part, the commission shall adopt a resolution reciting the filing of the petition provided for in 7-3-1204, the ordering and holding of a special election as requested in the petition, the result of the election and the holding of the special election for and the election of the members of the first commission, and the name and designation of the consolidated municipality. This resolution must be in duplicate and signed by all of the members of the commission and also entered at length on the journal of the commission. One copy of the resolution must be filed in the office of the clerk of the commission, and the other copy must be transmitted to and filed in the office of the secretary of state.

(2) Immediately upon the adoption of the resolution by the commission, the separate corporate existence of the county and of each city and town therein is considered to be consolidated and merged into one municipal corporation under the name selected, designated, and adopted as provided in this part, and the consolidated municipality is considered to have succeeded to and to possess and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns consolidated and merged.

History: En. Sec. 118, Ch. 121, L. 1923; re-en. Sec. 5520.119, R.C.M. 1935; R.C.M. 1947, 11-3559(part); amd. Sec. 4, Ch. 262, L. 1979.

7-3-1210. Existing contracts continued. All contracts entered into by the county or by any city or town therein or on behalf of any improvement district by such county or by any such city or town prior to the election and qualification of a commission under this part and part 13 shall continue in full force and effect subsequent thereto. Public improvements for which initial steps may have been taken under laws effective in the county prior to the election and qualification of a commission under this part and part 13 may thereafter be carried to completion in accordance with the provisions of such laws.

History: **En. Sec. 115, Ch. 121, L. 1923; re-en. Sec. 5520.116, R.C.M. 1935; R.C.M. 1947, 11-3556.**

7-3-1211. Treatment of existing ordinances. The commission first elected may, at its first meeting, make an order that all existing ordinances and resolutions of some one city or town within the consolidated municipality which are of general application in such city or town shall be continued in force and be extended throughout the consolidated municipality, and a copy of such order must be published at least once in each newspaper printed and published within the consolidated municipality within 10 days after the making of such order. All other ordinances and resolutions of such city or town and all ordinances of all other cities and towns within the consolidated municipality, save and except ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, shall, upon the making of such order, be deemed repealed.

History: **En. Sec. 116, Ch. 121, L. 1923; re-en. Sec. 5520.117, R.C.M. 1935; R.C.M. 1947, 11-3557.**

7-3-1212. Treatment of existing officers. The members of the board of county commissioners of the county and members of the council of every city and town therein holding office on the date when any election is held at which the question of the consolidation and merging of the county and city and town governments is approved and adopted by the qualified electors of the county shall continue in office and in the performance of their duties until the first commission shall have been elected and have qualified, whereupon such board of county commissioners and city and town councils shall be deemed abolished. All other persons holding offices or positions, whether elective or appointive, under the government of such county or under the government of any city or town therein at the date of such election shall continue in the performance of the duties of their respective offices and positions until provision shall be made by the commission for the performance or discontinuance of such duties or the discontinuance of such offices or positions.

History: **En. Sec. 117, Ch. 121, L. 1923; re-en. Sec. 5520.118, R.C.M. 1935; R.C.M. 1947, 11-3558.**

7-3-1213. Power to effectuate transition. The commission shall have power to make all necessary regulations not inconsistent with this part or part 13 for the transition from the several governments of and within the county to the government provided by this part and part 13, including the transfer to the treasury of the consolidated city and county of all funds and money of such several governments.

History: **En. Sec. 119, Ch. 121, L. 1923; re-en. Sec. 5520.120, R.C.M. 1935; R.C.M. 1947, 11-3560.**

7-3-1214. Consolidated municipality commission. (1) Except as otherwise provided in this part or part 13, all powers of the consolidated municipality are vested in a commission. For the purpose of determining the number of members composing the commission, consolidated municipalities organized under the provisions of this part and part 13 shall be classified and all of the provisions of 7-1-2111 and 7-1-2112 govern and control the classification of the consolidated municipalities.

(2) (a) In consolidated municipalities of the first class, the commission shall consist of seven members.

(b) In consolidated municipalities of the second class, third class, or fourth class, the commission shall consist of five members.

(c) In consolidated municipalities of the fifth class, sixth class, or seventh class, the commission shall consist of three members.

History: En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part); amd. Sec. 5, Ch. 262, L. 1979.

7-3-1215. Qualifications for commission. (1) Members of the commission must be qualified electors of the consolidated municipality and may not hold any other public office except that of notary public or member of the state militia.

(2) A member of the commission ceasing to possess any of the qualifications specified in this section shall immediately forfeit his office.

History: En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part); amd. Sec. 6, Ch. 262, L. 1979.

7-3-1216. Term of office of commission members. (1) Except as provided in subsection (2), the term of office of members of the commission shall be 4 years and shall commence on July 1 following their election.

(2) The terms of office of the members first elected at such special election shall commence on the first day of the third month following their election, and the terms of office of a majority of such members first elected, to be determined by lot, shall expire on June 30 in the first year following their election, and the terms of the remaining members first elected shall expire on June 30 in the third year following their election.

History: En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part).

7-3-1217. Vacancies. (1) If a vacancy occurs in the commission, except as the result of a recall election, some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term.

(2) Absence from all regular meetings for a period of 90 days shall operate to vacate the seat of a member unless such absence be authorized by the commission.

History: (1)En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; Sec. 11-3407, R.C.M. 1947; (2)En. Sec. 13, Ch. 121, L. 1923; re-en. Sec. 5520.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1967; Sec. 11-3413, R.C.M. 1947; R.C.M. 1947, 11-3407(part), 11-3413(part).

7-3-1218. Meetings of commission. (1) (a) Except as provided in subsection (1)(b), at 2 p.m. on the first Monday of January following a regular municipal election, the commission shall meet at the courthouse in the consolidated municipality and the newly elected members shall assume the duties of office.

(b) The first meeting of the commission after the special election at which the first members of the commission are elected shall be held at 2 p.m. on the first day of the third month following the special election, and at this meeting the members of the commission shall determine by lot the members whose terms will expire on the first Monday of January in the first year following such special election and the members whose terms will expire on the first Monday of January in the third year following such election.

(2) Thereafter the commission shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once in each month. Special meetings shall be called by the clerk of the commission upon written request of the president, the manager, or a majority of the members of the commission. A notice of a meeting shall state the subject to be considered at the meeting, and no other subject shall be considered at the meeting.

(3) All meetings of the commission and of committees thereof shall be open to the public, and the rules of the commission shall provide that citizens of the municipality shall have a reasonable opportunity to be heard at any meeting in regard to any matter considered thereat.

History: En. Sec. 8, Ch. 121, L. 1923; re-en. Sec. 5520.8, R.C.M. 1935; R.C.M. 1947, 11-3408; amd. Sec. 7, Ch. 262, L. 1979; amd. Sec. 384, Ch. 571, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 262 and Ch. 571, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 262 was a Code Commissioner bill and was not intended to make substantive changes in the law. Consequently a conflict of language in subsection (1) between Ch. 262 and Ch. 571 has been resolved in favor of the language used in Ch. 571.

7-3-1219. Organization and officers of commission. (1) At the first meeting of the commission following the special election at which the members thereof are first elected and thereafter at its meeting on July 1 following each general election at which members of the commission are elected, the commission shall choose one of its members as president and another as vice-president.

(2) The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by this part or part 13 and the ordinances of the municipality. He shall be recognized as the official head of the municipality for all ceremonial purposes, by the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency he shall, if authorized by vote of the commission, take command of the police, maintain order, and enforce the law. If a vacancy occurs in the office of president or in case of his absence or disability, the vice-president shall act as president for the unexpired term or during the continuance of the absence or disability.

(3) The director of finance shall be ex officio clerk of the commission and shall, either in person or by deputy, keep the records of the commission and perform such other duties as may be required by this part or part 13 or by the commission.

History: (1), (2)En. Sec. 10, Ch. 121, L. 1923; re-en. Sec. 5520.10, R.C.M. 1935; Sec. 11-3410, R.C.M. 1947; (3)En. Sec. 11, Ch. 121, L. 1923; re-en. Sec. 5520.11, R.C.M. 1935; Sec. 11-3411, R.C.M. 1947; R.C.M. 1947, 11-3410, 11-3411.

7-3-1220. Conduct of commission business. (1) The commission shall determine its own rules and order of business and shall keep a journal of its proceedings. It shall have power to compel the attendance of absent members, may punish its members for disorderly behavior, and, by vote of not less than two-thirds of its members, may expel a member for disorderly conduct or the repeated violation of its rules; but no member shall be expelled unless notified of the charge against him and given an opportunity to be heard.

(2) A majority of the members elected to the commission shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The affirmative vote of a majority of the members elected to the commission shall be necessary to adopt any ordinance, resolution, order, or vote; except that a vote to adjourn or regarding the attendance of absent members may be adopted by a majority of the members present.

History: **(1)En. Sec. 9, Ch. 121, L. 1923; re-en. Sec. 5520.9, R.C.M. 1935; Sec. 11-3409, R.C.M. 1947; (2)En. Sec. 12, Ch. 121, L. 1923; re-en. Sec. 5520.12, R.C.M. 1935; Sec. 11-3412, R.C.M. 1947; R.C.M. 1947, 11-3409, 11-3412.**

7-3-1221. Compensation of commission members. (1) The commission may by ordinance provide compensation for its members, but the total amount and manner of compensation may not exceed the maximum sum prescribed by law for aldermen of cities of the first class.

(2) In addition to any compensation authorized by this section, each member of the commission shall receive the same sum prescribed by law for county commissioners per mile for any distance in excess of 10 miles necessarily traveled in going from and returning to his residence because of attendance upon a regular or regularly called meeting of the commission or in travel in the county undertaken in performance of official duties.

History: **En. Sec. 13, Ch. 121, L. 1923; re-en. Sec. 5520.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1967; R.C.M. 1947, 11-3413(part).**

7-3-1222. Procedure to enact ordinances and resolutions. (1) Ordinances and resolutions shall be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, shall be confined to one subject, which shall be clearly expressed in the title, except as provided in 7-3-1226. Ordinances making appropriations shall be confined to the subject of appropriations. No ordinance shall be passed until it has been read on 3 separate days, unless the requirement of reading on 3 separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading shall be in full unless a written or printed copy of the measure shall have been furnished to each member of the commission prior to such reading.

(2) The enacting clause of all ordinances passed by the commission shall be: "Be it ordained by the city and county of ....", and the enacting clause of all ordinances submitted by the initiative shall be: "Be it ordained by the people of the city and county of .....".

(3) No ordinance, resolution, or section thereof shall be revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution, or section thereof as revised or amended.

(4) Every ordinance, or resolution upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the president and clerk. Within 10 days after its final passage, each ordinance or resolution shall be published at least once in such manner as the commission may provide by ordinance.

(5) Initiated ordinances adopted by the electors shall be published and may be amended or repealed by the commission, as in the case of other ordinances.

History: (1), (2)En. Sec. 14, Ch. 121, L. 1923; re-en. Sec. 5520.14, R.C.M. 1935; Sec. 11-3414, R.C.M. 1947; (3)En. Sec. 16, Ch. 121, L. 1923; re-en. Sec. 5520.16, R.C.M. 1935; Sec. 11-3416, R.C.M. 1947; (4)En. Sec.18, Ch. 121, L. 1923; re-en. Sec. 5520.18, R.C.M. 1935; Sec. 11-3418, R.C.M. 1947; (5)En. Sec. 24, Ch. 121, L. 1923; re-en. Sec. 5520.24, R.C.M. 1935; Sec. 11-3424, R.C.M. 1947; R.C.M. 1947, 11-3414, 11-3416, 11-3418, 11-3424(part).

7-3-1223. Effective date of ordinances. (1) Ordinances making the annual tax levy, ordinances and resolutions providing for local improvements and assessments, and emergency measures shall take effect at the time indicated therein. All other ordinances and resolutions enacted by the commission shall be in effect from and after 30 days from the date of their passage.

(2) When an ordinance proposed by initiative petition is passed by the commission in a changed or amended form and the committee of the petitioners requires that such proposed ordinance be submitted to a vote of the electors, as provided in 7-3-1229, the ordinance as passed by the commission shall not take effect until after such vote, and if the proposed ordinance so submitted be approved by a majority of the electors voting thereon, the ordinance as passed by the commission shall be deemed repealed.

(3) Ordinances adopted by the electors shall take effect at the time fixed therein or, if no time is specified, 30 days after the adoption thereof.

History: (1), (3)En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; Sec. 11-3417, R.C.M. 1947; (2)En. Sec.23, Ch. 121, L. 1923; re-en. Sec. 5520.23, R.C.M. 1935; Sec. 11-3423, R.C.M. 1947; R.C.M. 1947, 11-3417(part), 11-3423.

7-3-1224. Emergency measures. An emergency measure is an ordinance or resolution to provide for the immediate preservation of the public peace, health, or safety, in which the emergency claimed is set forth and defined in a preamble thereto. The affirmative vote of at least two-thirds of the members of the commission shall be required to pass an emergency ordinance or resolution.

History: En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; R.C.M. 1947, 11-3417(part).

7-3-1225. Vote required on certain measures. No measure making or amending a grant, renewal, or extension of a franchise or other special privilege may be passed without first submitting the application therefor to the qualified electors in the manner provided by 7-5-4321 and 7-5-4322.

History: En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; R.C.M. 1947, 11-3417(part); amd. Sec. 8, Ch. 262, L. 1979.

7-3-1226. Codification of ordinances. (1) Ordinances may be revised, codified, rearranged, and published in book form under appropriate titles, chapters, and sections, and such revision and codification may be made in one ordinance containing one or more subjects. The publication of such revision and codification in book form as aforesaid shall be held to be a sufficient publication of the ordinance or several ordinances contained in such revision and codification.

(2) Any such publication of a revision or codification of ordinances in book form shall contain a certificate of the president and clerk of the correctness of such revision, codification, and publication; and such book so published shall be received in evidence in any court for the purpose of proving the ordinance or ordinances therein contained, the same and for the same purpose as the original book, ordinances, minutes, or journals would be received.

History: En. Sec. 15, Ch. 121, L. 1923; re-en. Sec. 5520.15, R.C.M. 1935; R.C.M. 1947, 11-3415.

7-3-1227. Petition for initiative. (1) Any proposed ordinance, except an ordinance making a tax levy or appropriation, may be submitted to the commission by petition signed by 10% of the qualified electors of the municipality whose names appear on the register of voters on the date when the proposed ordinance is submitted to the commission.

(2) All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full.

(3) Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in 7-3-1227 through 7-3-1229 for initiating ordinances.

History: En. Secs. 19, 24, Ch. 121, L. 1923; re-en. Secs. 5520.19, 5520.24, R.C.M. 1935; R.C.M. 1947, 11-3419, 11-3424(part).

7-3-1228. Action on initiative petition. (1) If an initiative petition or amended petition be found sufficient by the clerk, he shall so certify and shall submit the ordinance therein set forth to the commission at its next meeting, and the commission shall at once read and refer it to an appropriate committee, which may be a committee of the whole.

(2) Provision shall be made for public hearings upon the proposed ordinance before the committee to which it is referred. Thereafter, the committee shall report the ordinance to the commission, with its recommendations thereon, not later than 60 days after the date on which such ordinance was submitted to the commission by the clerk.

(3) Upon receiving the ordinance from the committee, the commission shall proceed at once to consider it and shall take final action thereon within 30 days from the date of such committee report.

History: En. Sec. 20, Ch. 121, L. 1923; re-en. Sec. 5520.20, R.C.M. 1935; R.C.M. 1947, 11-3420.

7-3-1229. Submission of initiative measure to electors. (1) If the commission fails to pass an ordinance proposed by initiative petition or passes it in a form different from that set forth in the petition therefor, the committee of the petitioners hereinafter provided for may require that it be submitted to a vote of the electors either in its original form or with any change or amendment presented in writing, either at a public hearing before the committee to which the proposed ordinance was referred or during the consideration thereof by the commission. If the committee of petitioners requires the submission of a proposed ordinance to a vote of the electors, the committee shall certify that fact to the clerk and file in his office a certified copy of the ordinance, in the form in which it is to be submitted, within 10 days after final action on such ordinance by the commission.

(2) Upon receipt of the certified copy of a proposed ordinance from the committee of the petitioners, the clerk shall certify the fact to the commission at its next regular meeting. If a municipal election is to be held within 6 months but more than 90 days after the receipt of the clerk's certificate by the commission, such proposed ordinance shall be submitted to a vote of the electors at such election. If no such election is to be held within the time aforesaid, the commission may provide for submitting the proposed ordinance to the electors at a special election to be held not sooner than 90 days after receipt of the clerk's certificate. If no municipal election be held within 6 months as aforesaid and the commission does not provide for a special election, the proposed ordinance shall be submitted to the electors at the first election held after the expiration of such 6 months. If when submitted to the electors a majority of those voting on a proposed ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the municipality.

History: (1)En. Sec. 21, Ch. 121, L. 1923; re-en. Sec. 5520.21, R.C.M. 1935; Sec. 11-3421, R.C.M. 1947; (2)En. Sec. 22, Ch. 121, L. 1923; re-en. Sec. 5520.22, R.C.M. 1935; Sec. 11-3422, R.C.M. 1947; R.C.M. 1947, 11-3421, 11-3422.

7-3-1230. Petition for referendum. (1) The electors shall have power to approve or reject at the polls any ordinance passed by the commission except an ordinance making a tax levy or an emergency measure, such power being known as the referendum. Ordinances submitted to the commission and passed by the commission without change or passed in an amended form and not required by the committee of the petitioners to be submitted to a vote of the electors shall be subject to the referendum in the same manner as other ordinances.

(2) If, within 30 days after the final passage of an ordinance, a petition signed by 10% of the qualified electors whose names appear on the register of voters on the date when such petition is filed shall be filed with the clerk requesting that the ordinance or any specified part thereof be either repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. Referendum petitions shall contain the text of the ordinance or part thereof, the repeal of which is sought.

History: En. Sec. 25, Ch. 121, L. 1923; re-en. Sec. 5520.25, R.C.M. 1935; R.C.M. 1947, 11-3425.

7-3-1231. Action on referendum petition. (1) If a referendum petition or amended petition is found sufficient by the clerk, he shall certify that fact to the commission at its next regular meeting, and the ordinance or part thereof set forth in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until approved by the electors as hereinafter provided.

(2) Upon receipt of the clerk's certificate, the commission shall proceed to reconsider the ordinance or part thereof, and its final vote upon such reconsideration shall be upon the question "Shall the ordinance (or part of the ordinance) set forth in the referendum petition be repealed?" If upon such reconsideration the ordinance or part thereof is not repealed, it shall be submitted to the electors at the next municipal election held not less than 90 days after such final vote by the commission. The commission, by vote of not less than two-thirds of its members, may submit the ordinance or part

thereof to the electors at a special election to be held not sooner than the time aforesaid. If when submitted to the electors any ordinance or part thereof is not approved by a majority of those voting thereon, it shall be deemed repealed.

History: En. Sec. 26, Ch. 121, L. 1923; re-en. Sec. 5520.26, R.C.M. 1935; R.C.M. 1947, 11-3426.

7-3-1232. Preliminary acts authorized prior to submission of certain ordinances to electors. In case a petition is filed requiring that an ordinance passed by the commission providing for the expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of the contract for such improvement may be taken prior to the election.

History: En. Sec. 28, Ch. 121, L. 1923; re-en. Sec. 5520.28, R.C.M. 1935; R.C.M. 1947, 11-3428.

7-3-1233. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Secs. 29, 30, 31, Ch. 121, L. 1923; re-en. Secs. 5520.29, 5520.30, 5520.31, R.C.M. 1935; R.C.M. 1947, 11-3429, 11-3430, 11-3431; amd. Sec. 9, Ch. 262, L. 1979.

7-3-1234. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 27, Ch. 121, L. 1923; re-en. Sec. 5520.27, R.C.M. 1935; R.C.M. 1947, 11-3427.

7-3-1235 through 7-3-1240 reserved.

7-3-1241. Appointment and removal of manager of consolidated municipality. (1) The commission shall appoint a manager. He shall be chosen by the commission solely on the basis of his executive and administrative qualifications and need not, when appointed, be a resident of the municipality. No member of the commission shall, during the time for which elected, be chosen manager. In case of the absence or disability of the manager, the commission may designate some responsible person to perform the duties of the office. The manager shall receive such compensation as may be fixed by the commission.

(2) The manager shall not be appointed for a definite term but shall be removable at the pleasure of the commission. In case the commission determines to remove the manager, he shall, if he so demands, be given a written statement of the reason alleged for the proposed removal and the right to be heard thereon at a public meeting of the commission prior to the date on which his final removal shall take effect, but pending and during such hearing the commission may suspend him from office. The action of the commission in suspending or removing the manager shall be final, it being the intention of this section to vest all authority and fix all responsibility for any such suspension or removal in the commission.

History: En. Sec. 32, Ch. 121, L. 1923; re-en. Sec. 5520.32, R.C.M. 1935; R.C.M. 1947, 11-3432(part).

7-3-1242. Role of manager. (1) The manager shall be the chief executive officer of the municipality.

(2) The manager shall be responsible to the commission for the proper administration of the affairs of the municipality placed in his charge and to that end shall appoint all officers and employees in the administrative service

of the municipality, except as otherwise provided in this part or part 13 and except as he may authorize the head of a department or office responsible to him to appoint subordinates in such department or office.

History: En. Secs. 32, 33, Ch. 121, L. 1923; re-en. Secs. 5520.32, 5520.33, R.C.M. 1935; R.C.M. 1947, 11-3432(part), 11-3433(part).

7-3-1243. Appointments by manager. Appointments by or under the authority of the manager shall be confined to citizens of the municipality, except in such specific cases as the commission may suspend this requirement, and shall be on the basis of the ability, training, and experience of the appointees in the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed 60 days.

History: En. Sec. 33, Ch. 121, L. 1923; re-en. Sec. 5520.33, R.C.M. 1935; R.C.M. 1947, 11-3433(part).

7-3-1244. Removal of appointees. (1) Any officer or employee of the municipality appointed by the manager or upon his authorization may be laid off, suspended, or removed from office or employment either by the manager or the officer by whom appointed. Verbal or written notice of layoff, suspension, or removal given to an officer or employee or written notice left at or mailed to his usual place of residence shall be sufficient to put any such layoff, suspension, or removal into effect unless the person so notified shall, within 5 days of such notice, demand a written statement of reasons therefor and the right to be heard thereon before the manager. Upon such demand the officer making the layoff, suspension, or removal shall supply the person notified thereof with a written statement of the reasons therefor, and the manager shall fix a time and place for the public hearing. Following the public hearing the manager shall either confirm the layoff, suspension, or removal as specified in the notice, reinstate the person so notified in the service, or make such other disposition of the matter as in his opinion the good of the service may require.

(2) The decision of the manager in any such case shall be final, and there shall be no appeal therefrom to any officer, body, or court whatsoever. A copy of the written statement of reasons given for any layoff, suspension, or removal and a copy of any written reply thereto by the officer or employee involved, together with a copy of the decision of the manager, shall be filed as a public record in the office of the clerk.

History: En. Sec. 34, Ch. 121, L. 1923; re-en. Sec. 5520.34, R.C.M. 1935; R.C.M. 1947, 11-3434.

7-3-1245. Relationship of commission and manager regarding appointments and administrative service. (1) Neither the commission nor any of its committees or members shall direct or request the appointment of any person to or his removal from office or employment by the manager or any of his subordinates or in any manner take part in the appointment or removal of officers and employees in the administrative service of the municipality. Except for the purpose of inquiry, the commission and its members shall deal with that portion of the administrative service for which the manager is responsible solely through the manager, and neither the commission nor any member thereof shall give orders to any subordinate of the manager either publicly or privately.

(2) Any violation of the provisions of this section by a member of the commission shall be a misdemeanor, conviction of which shall immediately forfeit the office of the member so convicted.

History: En. Sec. 35, Ch. 121, L. 1923; re-en. Sec. 5520.35, R.C.M. 1935; R.C.M. 1947, 11-3435.

7-3-1246. General duties of manager. It shall be the duty of the manager to act as chief conservator of the peace within the municipality, to supervise the administration of the affairs of the municipality, to see that the ordinances of the municipality and the laws of the state are enforced, to make such recommendations to the commission concerning the affairs of the municipality as may seem to him desirable, to keep the commission advised of the financial conditions and future needs of the municipality, to prepare and submit to the commission such reports as may be required by that body, and to perform such other duties as may be prescribed by this part or part 13 or be required of him by ordinance or resolution of the commission.

History: En. Sec. 36, Ch. 121, L. 1923; re-en. Sec. 5520.36, R.C.M. 1935; R.C.M. 1947, 11-3436.

7-3-1247. Attendance and participation of manager, directors, and other officers at commission meetings. The manager, the directors of all departments, and all other officers of the municipality shall be entitled to be present at all sessions of the commission. The manager shall have the right to take part in the discussion of all matters coming before the commission, and the directors and other officers shall be entitled to take part in all discussions of the commission relating to their respective departments and offices.

History: En. Sec. 37, Ch. 121, L. 1923; re-en. Sec. 5520.37, R.C.M. 1935; R.C.M. 1947, 11-3437.

7-3-1248. Departments of consolidated municipality. (1) (a) In consolidated municipalities of the first, second, third, or fourth class, there shall be a department of finance, a police department, a department of public works, a department of health, a fire department, and such other departments and offices as may be established by ordinance.

(b) In consolidated municipalities of the fifth, sixth, or seventh class, there shall be a department of finance, a police department, a department of public works, a department of health, and such other departments and offices as may be established by ordinance.

(2) The commission may change or abolish any department or office established by ordinance and may prescribe, combine, distribute, or discontinue the functions and duties thereof. Additional functions and duties may be by ordinance assigned to departments and offices created by this part or part 13, but no function or duty assigned by this part or part 13 to any such department or office shall be discontinued or assigned to any other department or office. If the manager so recommends and the commission so authorizes, the manager may appoint one person to act as the head of two or more departments or offices, but the department of law may not thus be joined with any other department, nor may the manager be authorized to act as head of the department of finance or of any office therein other than of purchasing agent or assessor.

History: En. Sec. 38, Ch. 121, L. 1923; re-en. Sec. 5520.38, R.C.M. 1935; R.C.M. 1947, 11-3438; amd. Sec. 10, Ch. 262, L. 1979.

7-3-1249. Employees and employment list. (1) The number of assistants and other subordinates to be employed in or by each administrative department or office shall be fixed by the commission, but the commission may authorize the manager to determine the number of such assistants and subordinates in and for a specified department or office, subject to the appropriations made thereto.

(2) The director of finance shall maintain in his office a list of all persons in the administrative service of the municipality, showing in connection with each name the position held, the date of appointment, the character of employment, and the rate of compensation. Each appointing officer shall promptly transmit to the director of finance such information regarding his department or office as may be necessary to keep this list accurate in all respects at all times. The treasurer shall not pay nor shall the director of finance issue any warrant for the payment of any salary or compensation to any person whose name does not appear upon such list, nor shall payment be made at a rate other than that specified on such list. Any sum paid contrary to the foregoing provisions of this section may be recovered from any officer paying or authorizing the payment thereof or from the surety on his official bond. If through the failure of any officer to give information to the director of finance as required in this section or through omission or error in such information, payment is made to any person whose name should not be on such list or payment is made in excess of the amount which any person whose name is rightfully on the list should receive, then the amount of any such payment or excess payment may be recovered from the officer by reason of whose failure, omission, or error the payment or excess payment was made or from the surety on his official bond.

History: En. Secs. 39, 40, Ch. 121, L. 1923; re-en. Secs. 5520.39, 5520.40, R.C.M. 1935; R.C.M. 1947, 11-3439, 11-3440.

7-3-1250. Compensation of officers and employees. The compensation of officers and employees in the administrative service of the municipality shall be fixed by ordinance, but all positions in such service, except those of heads of departments and heads of offices not included within regular departments, shall, for purposes of compensation, be graded and classified by the manager according to duties and responsibilities. The commission shall by ordinance establish a schedule of compensation for the positions so graded and classified, which shall prescribe uniform compensation for like service as determined by the grading and classification by the manager. Such schedule of compensation may establish a minimum and maximum for any grade, and an increase in compensation within the limits provided for any grade may be granted by the manager upon the basis of efficiency and seniority.

History: En. Sec. 41, Ch. 121, L. 1923; re-en. Sec. 5520.41, R.C.M. 1935; R.C.M. 1947, 11-3441.

7-3-1251. Advisory boards. The manager may appoint a board of citizens qualified to act in an advisory capacity to the head of any specified department or office. The members of all such boards shall serve without compensation, and it shall be their duty to consult with and advise the officer in charge of the department or office for which they are appointed, but not to direct the conduct of such department or office. Public meetings of such boards may be called for the consideration of the affairs of the department or office for which they are appointed.

History: **En. Sec. 42, Ch. 121, L. 1923; re-en. Sec. 5520.42, R.C.M. 1935; R.C.M. 1947, 11-3442.**

7-3-1252. Investigatory powers of commission and manager. (1) The commission, the manager, or any person or committee authorized by either of them shall have power to inquire into the conduct of any department or office of the municipality and to make investigations as to municipal affairs and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence.

(2) It shall be the duty of the manager to designate a police officer to serve subpoenas. The commission shall provide by ordinance the penalty or penalties for contempt in refusing to obey any such subpoena or to produce such books, papers, and other evidence and shall have the power to punish any such contempt in the manner provided by ordinance.

History: **En. Sec. 43, Ch. 121, L. 1923; re-en. Sec. 5520.43, R.C.M. 1935; R.C.M. 1947, 11-3443.**

7-3-1253. Disposition of money received by officers in official capacity. No person elected or appointed to any office or position under the municipal government established by this part and part 13 shall be entitled to or receive for his own use any fees, emoluments, commissions, or perquisites other than the salary or compensation fixed by this part and part 13 or by the commission; and all such fees, emoluments, commissions, and perquisites ensuing out of the performance of official duty shall belong to the municipality and be paid into the treasury thereof at the times and in the manner provided by the general laws of the state.

History: **En. Sec. 107, Ch. 121, L. 1923; re-en. Sec. 5520.108, R.C.M. 1935; R.C.M. 1947, 11-3548.**

7-3-1254. Nonpartisan nature of government. (1) No person holding an appointive office or position in the municipal government shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or purpose whatever. No person shall orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. No person shall use or promise to use his influence or official authority to secure any appointment or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service. No person shall take part in preparing any political assessment, subscription, or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality, nor shall he knowingly send or present, directly or indirectly, in person or otherwise, any political assessment, subscription, or contribution to or request its payment by any person in such service.

(2) No person in the service of the municipality shall discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in such service or threaten to do so for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. No person holding an appointive office or

place in the municipal government shall act as an officer in a political organization or serve as a member of a committee of any such organization or circulate or seek signatures for any petition provided for by primary or election laws.

(3) Any person who, by himself or in cooperation with one or more persons, willfully or corruptly violates any of the provisions of subsections (1) and (2) shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than $50 or more than $500 or by imprisonment for a term not exceeding 3 months or by both such fine and imprisonment, and if he is an officer or employee of the municipality, he shall immediately forfeit his office or employment.

History: **En. Secs. 108, 109, 110, Ch. 121, L. 1923; re-en. Secs. 5520.109, 5520.110, 5520.111, R.C.M. 1935; R.C.M. 1947, 11-3549, 11-3550, 11-3551.**

7-3-1255. Commissioners not to hold or seek other office. No person elected to the commission shall, during the term for which elected, be appointed to any office or position in the service in the municipality. If a member of the commission shall become a candidate for any public office other than that of commissioner, he shall immediately forfeit his place on the commission.

History: **En. Sec. 111, Ch. 121, L. 1923; re-en. Sec. 5520.112, R.C.M. 1935; R.C.M. 1947, 11-3552(part).**

7-3-1256. Appointive officers not to seek other office. Any appointive officer or employee of the municipality who shall become a candidate for nomination or election to any public office shall immediately forfeit the office or employment held under the municipality.

History: **En. Sec. 111, Ch. 121, L. 1923; re-en. Sec. 5520.112, R.C.M. 1935; R.C.M. 1947, 11-3552(part).**

7-3-1257. Control of conflict of interest. No officer or employee of the municipality shall have a financial interest, direct or indirect, in any contract therewith or be financially interested, directly or indirectly, in the sale to the municipality of any land, materials, supplies, or services except on behalf of the municipality as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, actual or implied, of the person or corporation contracting with the municipality shall render the contract involved voidable by the manager or the commission.

History: **En. Sec. 114, Ch. 121, L. 1923; re-en. Sec. 5520.115, R.C.M. 1935; R.C.M. 1947, 11-3555.**

7-3-1258. Official bonds. (1) The members of the commission, the manager, the director of finance, the purchasing agent, the director of law, the director of police, and such other officers and employees of the municipality as the commission requires to do so shall, immediately upon taking office, give bonds with such surety as may be approved by the commission; but no officer or employee shall become surety upon the official bond of another officer or employee. Members of the commission shall give bonds in the sum of $5,000 and other officers and employees shall give bonds in such amounts as the commission may require. The premium on all official bonds shall be paid by the municipality.

(2) All such bonds, except those of the manager and the director of finance, shall be filed with the director of finance. The official bonds of the manager and the director of finance shall be filed with and kept by the director of the department of law.

History: **En. Sec. 112, Ch. 121, L. 1923; re-en. Sec. 5520.113, R.C.M. 1935; R.C.M. 1947, 11-3553.**

7-3-1259. Oath of office. Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the oath or affirmation required of officers by the constitution of the state of Montana, which oath or affirmation shall be filed and kept in the office of the clerk.

History: **En. Sec. 113, Ch. 121, L. 1923; re-en. Sec. 5520.114, R.C.M. 1935; R.C.M. 1947, 11-3554.**

7-3-1260 through 7-3-1270 reserved.

7-3-1271. General provisions related to elections. (1) For any election held on the question of the adoption of this part and part 13 and for the first election of members of the commission thereunder if adopted, the county election administrator and board of county commissioners shall exercise the powers and perform the duties respecting elections prescribed for county election administrators and boards of county commissioners by the general laws of the state.

(2) After the adoption of this part and part 13 by the electors of the county and the election and qualification of a commission thereunder, elections shall be conducted as provided in Title 7 and Title 13.

History: **En. Secs. 89, 90, Ch. 121, L. 1923; re-en. Secs. 5520.90, 5520.91, R.C.M. 1935; R.C.M. 1947, 11-3530, 11-3531(part); amd. Sec. 385, Ch. 571, L. 1979.**

7-3-1272 through 7-3-1280. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-3-1272. En. Sec. 90, Ch. 121, L. 1923; re-en. Sec. 5520.91, R.C.M. 1935; R.C.M. 1947, 11-3531(part).

7-3-1273. En. Secs. 91, 93, Ch. 121, L. 1923; re-en. Secs. 5520.92, 5520.94, R.C.M. 1935; R.C.M. 1947, 11-3532, 11-3534(part).

7-3-1274. En. Sec. 92, Ch. 121, L. 1923; re-en. Sec. 5520.93, R.C.M. 1935; R.C.M. 1947, 11-3533.

7-3-1275. En. Sec. 93, Ch. 121, L. 1923; re-en. Sec. 5520.94, R.C.M. 1935; R.C.M. 1947, 11-3534(part).

7-3-1276. (1)En. Sec. 94, Ch. 121, L. 1923; re-en. Sec. 5520.95, R.C.M. 1935; Sec. 11-3535, R.C.M. 1947; (2)En. Sec. 96, Ch. 121, L. 1923; re-en. Sec. 5520.97, R.C.M. 1935; Sec. 11-3537, R.C.M. 1947; (3)En. Sec. 95, Ch. 121, L. 1923, re-en. Sec. 5520.96, R.C.M. 1935; Sec. 11-3536, R.C.M. 1947; R.C.M. 1947, 11-3535(part), 11-3536, 11-3537.

7-3-1277. En. Sec. 94, Ch. 121, L. 1923; re-en. Sec. 5520.95, R.C.M. 1935; R.C.M. 1947, 11-3535(part).

7-3-1278. En. Sec. 97, Ch. 121, L. 1923; re-en. Sec. 5520.98, R.C.M. 1935; R.C.M. 1947, 11-3538.

7-3-1279. En. Sec. 98, Ch. 121, L. 1923; re-en. Sec. 5520.99, R.C.M. 1935; R.C.M. 1947, 11-3539(part).

7-3-1280. En. Sec. 98, Ch. 121, L. 1923; re-en. Sec. 5520.99, R.C.M. 1935; R.C.M. 1947, 11-3539(part).

Part 13

City-County Consolidation Option 2—Continued

7-3-1301. Department of finance. (1) The director of finance shall have charge of the administration of the financial affairs of the municipality, including the keeping and supervision of all accounts; the custody and disbursement of municipal funds and money; the making of special assessments and the assessment of property for taxation; the issuance of licenses; the collection of license fees; the control over expenditures; the purchase, storage, and distribution of supplies needed by the municipality; and such other duties as the commission may by ordinance require.

(2) He shall also have all powers and perform all duties imposed upon county clerk and recorders and auditors by general law.

(3) All of the provisions of the general laws of the state in respect to budgets for cities and counties shall apply to such municipality.

History: En. Secs. 45, 54, Ch. 121, L. 1923; re-en. Secs. 5520.45, 5520.54, R.C.M. 1935; R.C.M. 1947, 11-3445, 11-3454(part).

7-3-1302. Fiscal year. The fiscal year of the municipality shall begin with July 1 and shall end with the succeeding June 30.

History: En. Sec. 54, Ch. 121, L. 1923; re-en. Sec. 5520.54, R.C.M. 1935; R.C.M. 1947, 11-3454(part).

7-3-1303. Monthly financial statements. The director of finance shall prepare and submit to the commission each month a summary statement of revenues and expenses for the preceding month, detailed as to appropriations and funds in such manner as shows the exact financial condition of the municipality and of each department and office thereof as of the last day of such month.

History: En. Sec. 46, Ch. 121, L. 1923; re-en. Sec. 5520.46, R.C.M. 1935; R.C.M. 1947, 11-3446.

7-3-1304. Division of audit and accounts. There shall be in the department of finance a division of audit and accounts, of which the director of finance shall himself be the head. As head of such office he shall be charged with keeping the books of financial account for all departments and offices of the municipality, and whenever practicable, such books and accounts shall be kept in the office of the division of audit and accounts. Report shall be made daily to the division of audit and accounts by each department and office, showing the receipt of all money and the disposition thereof.

History: En. Sec. 47, Ch. 121, L. 1923; re-en. Sec. 5520.47, R.C.M. 1935; R.C.M. 1947, 11-3447.

7-3-1305. Conduct of audits. (1) Upon the death, resignation, removal, or expiration of the term of any officer of the municipality, the director of finance shall cause an audit and investigation of the accounts of such officer to be made and shall report to the manager and the commission. Either the commission or the manager may at any time provide for an examination or audit of the accounts of any officer or department of the municipal government.

(2) In case of the death, resignation, or removal of the director of finance, the manager shall cause an audit to be made of his accounts.

(3) If, as a result of any such audit, an officer is found indebted to the municipality, the director of finance or other person making such audit shall immediately give notice thereof to the commission, the manager, and the director of law, and the latter shall forthwith proceed to collect such indebtedness.

History: En. Sec. 48, Ch. 121, L. 1923; re-en. Sec. 5520.48, R.C.M. 1935; R.C.M. 1947, 11-3448.

7-3-1306. Division of treasury. (1) There shall be in the department of finance a division of the treasury, the head of which shall be treasurer of the municipality, shall have the powers and perform the duties prescribed for city treasurers and county treasurers by general law, and shall be required to qualify by giving a bond in the same amount required of county treasurers of counties of the same class.

(2) All money received by an officer or employee of the municipality for or in connection with the business of the municipality shall be paid promptly into the treasury. The commission shall by ordinance provide for the prompt and regular payment of such money into the treasury and shall also, in the manner hereinafter provided, designate the banking institutions with which it shall be deposited.

History: En. Sec. 49, Ch. 121, L. 1923; re-en. Sec. 5520.49, R.C.M. 1935; R.C.M. 1947, 11-3449.

7-3-1307. Division of purchases and supplies. There shall be in the department of finance a division of purchases and supplies, at the head of which there shall be a purchasing agent. The purchasing agent shall make all purchases for the municipality in the manner and with such exceptions as may be provided by ordinance and shall, under such regulations as may be provided by ordinance, sell all property, real and personal, of the municipality not needed for public use or that may have become unsuitable for use. He shall have charge of such storerooms and warehouses of the municipality as the commission may by ordinance provide.

History: En. Sec. 50, Ch. 121, L. 1923; re-en. Sec. 5520.50, R.C.M. 1935; R.C.M. 1947, 11-3450.

7-3-1308. Procedure for purchase, sale, and supply. (1) Before making any purchase or sale, the purchasing agent shall give opportunity for competition, under such rules as the commission may by ordinance establish.

(2) Supplies required by any department or office of the municipality may be furnished upon requisition from the stores under the control of the purchasing agent and whenever so furnished shall be paid for by the department or office furnished therewith by warrant made payable to the credit of the store's account of the division of purchases and supplies. The purchasing agent shall not furnish any supplies to any department or office unless there is to the credit thereof an available unencumbered appropriation balance sufficient to pay for such supplies.

History: En. Sec. 51, Ch. 121, L. 1923; re-en. Sec. 5520.51, R.C.M. 1935; R.C.M. 1947, 11-3451.

7-3-1309. Division of assessment. (1) There shall be in the department of finance a division of assessment, the head of which shall be the assessor. The assessor and his deputies shall have the powers, qualify in the manner, and perform the duties prescribed for county assessors and deputy assessors by general law.

(2) The assessor shall also be in charge of the preparation of all special assessments for public improvements, the giving of notice of such assessments to property owners, and the certification of all unpaid assessments to the director of finance.

History: En. Secs. 52, 53, Ch. 121, L. 1923; re-en. Secs. 5520.52, 5520.53, R.C.M. 1935; R.C.M. 1947, 11-3452, 11-3453.

7-3-1310. Limitation on tax levy. (1) No ordinance making the annual tax levy shall be passed fixing the rate to be levied upon all property within the municipality to defray current expenses, including salaries otherwise unprovided for, in excess of the maximum levies prescribed by law for general fund purposes in the county and the cities and towns which have been consolidated into a single government.

(2) The tax limit provided by subsection (1) shall apply only to taxes for the purposes therein specified. Taxes required by this part or part 12 to be levied on account of the debt of the municipality or any district thereof and special taxes authorized by this part or part 12 or by the general laws of the state shall not be affected by such limits, nor shall such taxes be considered in determining the limits of taxation fixed by subsection (1).

History: (1)En. Sec. 55, Ch. 121, L. 1923; re-en. Sec. 5520.55, R.C.M. 1935; amd. Sec. 1, Ch. 81, L. 1967; Sec. 11-3455, R.C.M. 1947; (2)En. Sec. 56, Ch. 121, L. 1923; re-en. Sec. 5520.56, R.C.M. 1935; Sec. 11-3456, R.C.M. 1947; R.C.M. 1947, 11-3455, 11-3456.

7-3-1311. Authority for special taxes and special service districts. (1) The municipality shall have the power and authority to levy special taxes for all purposes which counties, cities, and towns are authorized to levy by general laws of the state, and all of the provisions of such laws shall be applicable to and shall govern and control the municipality in the levying and collection of such special taxes.

(2) The commission may by ordinance designate clearly specified districts in or for which special services are to be performed and may levy upon the property in any such district such tax, in addition to any taxes authorized by 7-3-1310(1), as may be necessary with other available funds and grants to pay the cost of such special service or services. The boundaries of special service districts shall be regularly reviewed by the commissioners and may be adjusted upon recommendation by an authorized planning body in response to changing population patterns. In no case shall such additional levy be more than 20 mills.

History: (1)En. Sec. 57, Ch. 121, L. 1923; re-en. Sec. 5520.57, R.C.M. 1935; Sec. 11-3457, R.C.M. 1947; (2)En. Sec. 1, Ch. 162, L. 1925; re-en. Sec. 5520.58, R.C.M. 1935; amd. Sec. 2, Ch. 81, L. 1967; Sec. 11-3458, R.C.M. 1947; R.C.M. 1947, 11-3457, 11-3458.

7-3-1312. Collection of taxes. All taxes levied by the municipality shall be collected and payable in the manner, at the time, and under the penalties prescribed by law for the collection and payment of state and county taxes.

History: En. Sec. 58, Ch. 121, L. 1923; re-en. Sec. 5520.59, R.C.M. 1935; R.C.M. 1947, 11-3459.

7-3-1313. Special taxing districts for indebtedness existing prior to consolidation. (1) The district comprised within the boundaries of any city, town, or district existing within the county at the time of the adoption of this part and part 12 by the electors thereof shall, for the purpose of paying the interest and principal of any debt incurred by such city, town, or district prior to such adoption, be continued as a special district until such debt shall have been paid. The commission shall, in the annual tax levy ordinance, levy upon the property within each such district such tax, in addition to all other taxes, as the director of finance shall report to be necessary to provide for paying the interest on each such debt as it falls due and the principal thereof as it matures, and no other property within the municipality shall be taxable or made liable for the payment of any such debt.

(2) The commission shall likewise provide in the annual tax levy ordinance for the levy of such tax upon all property within the municipality as the director of finance shall report to be necessary to provide for paying the interest as it falls due and the principal as it matures of any debt of the municipality as a whole.

(3) The tax levy for the debt of the municipality as a whole and the tax levy for the debt of each such district shall each be a separate levy and shall be distinct from and in addition to all other tax levies. The proceeds of each such tax levy shall be placed in a separate fund for the payment of the interest and principal of the debt for which the tax was levied, and no part of any such fund shall be used for any other purpose whatever.

History: **En. Sec. 59, Ch. 121, L. 1923; re-en. Sec. 5520.60, R.C.M. 1935; R.C.M. 1947, 11-3460.**

7-3-1314. Payment and investigation of claims — use of warrants. (1) No claim against the municipality shall be paid except by means of a warrant on the treasury issued by the director of finance. The director of finance shall issue no warrant for the payment of a claim unless the claim is evidenced by a voucher approved by the head of the department or office for which the indebtedness was incurred, and each such officer and his surety shall be liable to the municipality for all loss or damage sustained by reason of his negligent or corrupt approval of any claim.

(2) The director of finance shall examine all payrolls, bills, and other claims and demands against the municipality and shall issue no warrant for payment unless he finds that the claim is in proper form, correctly computed, and duly approved; that it is legally due and payable; and that an appropriation has been made therefor which has not been exhausted. He may investigate any claimant and for that purpose may summon before him any officer, agent, or employee of the municipality or any claimant or other person and examine him upon oath or affirmation relative thereto. If he finds a claim to be fraudulent, erroneous, or otherwise invalid or that the appropriation out of which such claim is payable has been exhausted, he shall not issue a warrant therefor. If the director of finance issue a warrant on the treasury authorizing payment of any claim in contravention of the provisions of this subsection, he and his sureties shall be individually liable to the municipality for the amount of such warrant if paid.

History: **En. Secs. 60, 61, Ch. 121, L. 1923; re-en. Secs. 5520.61, 5520.62, R.C.M. 1935; R.C.M. 1947, 11-3501, 11-3502.**

7-3-1315. Certification of certain obligations by finance director. (1) No contract, agreement, or other obligation, other than contracts pertaining to work or improvements to be paid for by special assessments, involving the expenditure of any funds shall be entered into nor shall any order for such expenditures be valid unless the director of finance shall first certify to the commission that the object or purpose for which such expenditure is to be made and the amount thereof is provided for by an appropriation in the annual budget or in a supplemental budget and that the same has not been expended. The certificate of the director of finance shall be filed and made a matter of record in his office, and the appropriation for such purpose shall thereafter be considered as having been set aside and expended to the amount of such contract, agreement, or obligation.

(2) All contracts, agreements, or other obligations entered into, all ordinances and resolutions passed, and all orders adopted contrary to the provisions of subsection (1) shall be void, and no person whatever shall have any claim or demand against the municipality thereunder, nor shall the commission or any officer of the municipality waive or qualify the limitations fixed by subsection (1) or fasten upon the municipality any liability whatever in excess thereof.

History: En. Secs. 62, 63, Ch. 121, L. 1923; re-en. Secs. 5520.63, 5520.64, R.C.M. 1935; R.C.M. 1947, 11-3503, 11-3504.

7-3-1316. Designation of depository banks. On or before August 1 of each year, the commission shall designate the banks subject to state or national supervision in which the funds of the municipality shall be deposited. In designating such banks, the commission shall specify the maximum amount of municipal funds that may be kept at any time in each.

History: En. Sec. 64, Ch. 121, L. 1923; re-en. Sec. 5520.65, R.C.M. 1935; R.C.M. 1947, 11-3505(part).

7-3-1317. Deposit security. (1) Unless a bank designated as a depository shall elect to deposit securities with the treasurer as provided in subsection (2), it shall give good and sufficient bonds, with sureties to be approved by the commission, conditioned for the safekeeping and payment of the municipal funds deposited therewith and the interest thereon. Any such bonds of a depository shall be in the aggregate equal to the amount designated by the commission as the maximum of municipal funds which may at any time be kept by such depository. All surety bonds given by a bank in accordance with the provisions of this subsection shall continue in force so long as funds of the municipality deposited therein shall be unpaid. Nothing provided herein shall impair the rights and remedies of the municipality on such bonds under the laws of the state.

(2) In lieu of the surety bonds specified in subsection (1), any bank designated as a depository of municipal funds may deposit with the treasurer bonds of the class and kind in which, by the provisions of 7-3-1322, the sinking fund of the municipality may be invested. Bonds so deposited shall be in an amount equal to the amount of municipal funds permitted at any time to be deposited with such bank, shall be approved by the commission, and shall be accompanied by proper assignment, to the end that the bank so depositing and assigning such bonds will safely keep and pay over to the treasurer or his order, on demand and free of exchange, all money at any time deposited therein with interest thereon at the rate agreed upon and that in case of default on the part of such bank, the commission shall have power

and authority to sell such bonds or so much thereof as may be necessary to realize the full amount of the funds deposited therein. The bank shall be entitled to interest on the securities so deposited with the treasurer, when paid, and to the return of the securities at the termination of such trust so long as the bank is not in default. With the approval of the commission, a bank may at any time substitute other like securities of equal value for those so deposited.

(3) Bonds and other securities given by banks in accordance with this part shall be entered in a record to be kept for that purpose by the director of finance and deposited with the treasurer for safekeeping. The record of such bonds and securities kept by the director of finance or copies thereof certified by that officer shall be competent and prima facie evidence of the contents and tenor thereof.

History: **En. Secs. 64, 65, 67, Ch. 121, L. 1923; re-en. Secs. 5520.65, 5520.66, 5520.68, R.C.M. 1935; R.C.M. 1947, 11-3505(part), 11-3506, 11-3508.**

7-3-1318. Additional or new deposit security. Whenever for any cause the commission shall deem the bonds or securities of any bank insufficient security for the municipal funds deposited or likely to be deposited therein, the commission shall require new bonds to be given or new securities to be deposited with the treasurer. If any bank shall fail promptly to execute and present such new bonds or deposit such new securities, the treasurer shall at once withdraw all deposits therefrom, and no further deposit of municipal funds shall be made therein until such bank shall have been redesignated by the commission as a depository.

History: **En. Sec. 66, Ch. 121, L. 1923; re-en. Sec. 5520.67, R.C.M. 1935; R.C.M. 1947, 11-3507.**

7-3-1319. Deposit of funds with depository banks. (1) All funds received by the treasurer shall be deposited by him in the designated banks in the name of the municipality, subject to the order of the treasurer, and shall be distributed among the designated banks as nearly as may be in proportion to the maximum amounts which they have been authorized to receive by the commission.

(2) Banks designated as depositories shall pay interest on daily balances of municipal funds at a rate approved by the commission, which shall in no case be less than 2 ½%. The interest due on such deposits shall be paid to the treasurer by check on the last day of each quarter of the fiscal year. If the treasurer shall at any time receive or have in any bank funds which will probably remain on deposit 3 months or longer, he may, with the approval of the commission, either take therefor certificates of deposit from a designated depository, payable to his order on demand and bearing a higher rate of interest, or invest such funds in any bonds maturing within 6 months in which the sinking fund of the municipality may be invested. The treasurer shall make a monthly statement to the director of finance of the municipal funds in each bank and the interest received therein, as of the last day of each month.

(3) No bank receiving funds of the municipality on deposit shall have authority to pay out any such money except upon checks drawn upon that bank signed by the treasurer.

History: **(1)En. Sec. 68, Ch. 121, L. 1923; re-en. Sec. 5520.69, R.C.M. 1935; Sec. 11-3509, R.C.M. 1947; (2)En. Sec. 69, Ch. 121, L. 1923; re-en. Sec. 5520.70, R.C.M. 1935; Sec. 11-3510, R.C.M. 1947;**

(3)En. Sec. 70, Ch. 121, L. 1923; re-en. Sec. 5520.71, R.C.M. 1935; Sec. 11-3511, R.C.M. 1947; R.C.M. 1947, 11-3509, 11-3510, 11-3511.

7-3-1320. Liability for deposited funds. (1) When the funds of the municipality are deposited and kept in designated banks according to the provisions of this part, the treasurer and the sureties on his official bond shall be exempt from all liability for the loss of any funds so deposited if such loss is caused by the failure, bankruptcy, or any other act or default of such banks, but the want of care or due diligence on the part of the treasurer or commission in protecting the municipality against loss shall not exempt the treasurer, the members of the commission, or sureties on their respective bonds from liability.

(2) Nothing provided herein shall deprive the municipality of any right or remedy against any defaulting bank or against its officers or stockholders.

History: En. Sec. 71, Ch. 121, L. 1923; re-en. Sec. 5520.72, R.C.M. 1935; R.C.M. 1947, 11-3512.

7-3-1321. Authorization to incur indebtedness — limitation. (1) The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

(2) The municipality may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 28% of the taxable value of the taxable property therein, as ascertained by the last assessment for state and county taxes prior to incurring such indebtedness. All warrants, bonds, or obligations in excess of such amount given by or on behalf of the municipality shall be void.

History: En. Secs. 72, 73, Ch. 121, L. 1923; re-en. Secs. 5520.73, 5520.74, R.C.M. 1935; R.C.M. 1947, 11-3513, 11-3514; amd. Sec. 39, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Changed "The municipality shall not" to "The municipality may not" at the beginning of (2); and substituted "exceeding 28% of the taxable value" for "exceeding 5% of the value" in the middle of (2).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobiles and light trucks.

7-3-1322. Investment of sinking funds. (1) The sinking funds of the municipality shall be in charge of a sinking fund board consisting of the president, the director of finance, and the director of law. The president shall be the chairman and the director of finance, the secretary of the board. By and with consent of the commission, the sinking fund board shall invest the sinking fund in bonds or certificates of indebtedness of the United States, state bonds or certificates of indebtedness of Montana or any other state of the United States, bonds of the municipality, registered warrants on the treasury of such municipality, bonds of any city in Montana, and in such county or school bonds of Montana as may be approved by the commission.

(2) In case the sinking fund is invested in bonds of the municipality, such bonds shall not be canceled before maturity but shall be held by the sinking fund board and the interest thereon paid over and applied to the increase of the sinking fund. Whenever the principal of any of the bonds of the municipality shall become due, the sinking fund board shall, with the consent of the commission, dispose of such of the bonds belonging to the sinking fund as, with the money on hand belonging to the sinking fund, shall be necessary to pay the bonds so becoming due.

History: **En. Sec. 74, Ch. 121, L. 1923; re-en. Sec. 5520.75, R.C.M. 1935; R.C.M. 1947, 11-3515.**

7-3-1323. Competitive, advertised bidding required for certain contracts. All contracts entered into by the municipality for supplies or materials, for any public work, or for the construction, reconstruction, repair, maintenance, or operation of any public works or improvements, for which must be paid a sum exceeding $2,000, shall be awarded to the lowest responsible bidder after public advertisement and competition as may be prescribed by ordinance, but the manager shall have the right to reject all bids and advertise again. All advertisements as to contracts shall contain a reservation of the foregoing right. All contracts entered into by the municipality shall be signed by the manager after approval thereof by the commission.

History: **En. Sec. 75, Ch. 121, L. 1923; re-en. Sec. 5520.76, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1967; R.C.M. 1947, 11-3516.**

7-3-1324. Alteration of contracts. When it becomes necessary in the opinion of the manager to make alterations or modifications in any contract entered into by the municipality, such alterations shall be made only when authorized by the commission upon the written recommendation of the manager. No such alteration shall be valid unless the new price to be paid for any supplies, material, or work under the altered or modified contract shall have been agreed upon in writing and signed by the contractor and the manager prior to such authorization by the commission.

History: **En. Sec. 76, Ch. 121, L. 1923; re-en. Sec. 5520.77, R.C.M. 1935; R.C.M. 1947, 11-3517.**

7-3-1325 through 7-3-1330 reserved.

7-3-1331. Department of public works. (1) The department of public works is in the charge of a director, who shall manage and have charge of the construction, repair, improvement, and maintenance of all public buildings; of roads, streets, alleys, sidewalks, bridges, viaducts, and other public ways; of sewers, drains, ditches, culverts, streams, and watercourses; and of boulevards, parks, playgrounds, cemeteries, and other public places and grounds dedicated to public use. He shall manage and control all public cemeteries, crematories, market places or houses, garbage and sewage disposal plants and farms, and all public utilities belonging to the municipality or any subdivision thereof and shall have charge of the enforcement of the obligations to the municipality of all privately owned or operated public utilities enforceable by the municipality. He shall have charge of the cleaning, sprinkling, and lighting of the streets and the collection and disposal of garbage and waste. He shall also be responsible for the making and preservation of all surveys, maps, plans, drawings, and estimates for such public work and for the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the functions of the department.

(2) The director of public works shall have the qualifications prescribed by law for county surveyors, and in addition to the duties required by this part or part 12 and by the ordinances of the municipality, he shall have the powers and shall, either in person or by a deputy having the qualifications prescribed by law for county surveyors, perform the duties required of county surveyors by the laws of the state.

History: (1)En. Sec. 78, Ch. 121, L. 1923; re-en. Sec. 5520.79, R.C.M. 1935; Sec. 11-3519, R.C.M. 1947; (2)En. Sec. 79, Ch. 121, L. 1923; re-en. Sec. 5520.80, R.C.M, 1935; Sec. 11-3520, R.C.M. 1947; R.C.M. 1947, 11-3519, 11-3520; amd. Sec. 12, Ch. 262, L. 1979.

7-3-1332. Public works and improvements. (1) Any local public work may be done or any local public works or improvements may be constructed, reconstructed, repaired, maintained, or operated, either by contract or directly by the municipality, as may be determined by the commission. Before authorizing that any local public works or improvements be directly constructed, reconstructed, repaired, maintained, or operated, detailed plans and estimates for each such work or improvement shall be submitted to the commission by the manager, and there shall be separate accounting for each work or improvement so executed.

(2) The municipality shall have the same power and authority to create special improvement districts and for like purposes and to create special lighting districts and sprinkling districts as provided by the laws of the state for cities and towns.

(3) The director of public works shall be the engineer in charge of all such work, works, or improvements. The provisions of the general law of the state regarding special improvement districts, special lighting districts, and sprinkling districts in cities and towns shall apply to and control the establishment under this part of special improvement districts, special lighting districts, and sprinkling districts in and for the municipality and the procedure according to which any local public work or the construction, reconstruction, repair, maintenance, or operation of any local public work or improvement is to be provided for when the cost thereof is to be paid in whole or in part by assessments upon the property within any such district, and such general law shall also apply to the manner of levying and collecting such assessments.

History: (1)En. Sec. 86, Ch. 121, L. 1923; re-en. Sec. 5520.87, R.C.M. 1935; Sec. 11-3527, R.C.M. 1947; (2)En. Sec. 87, Ch. 121, L. 1923; re-en. Sec. 5520.88, R.C.M. 1935; Sec. 11-3528, R.C.M. 1947; (3)En. Sec. 88, Ch. 121, L. 1923; re-en. Sec. 5520.89, R.C.M. 1935; Sec. 11-3529, R.C.M. 1947; R.C.M. 1947, 11-3527, 11-3528, 11-3529.

7-3-1333 through 7-3-1340 reserved.

7-3-1341. Department of law. (1) The department of law is in the charge of a director to be appointed by the commission without definite term, who shall be a resident and elector of the municipality and who shall possess all of the qualifications required of county attorneys.

(2) He shall have all the powers and, either personally or by such assistants as he may designate, shall perform all the duties that are prescribed

for county attorneys, city attorneys, and public administrators, and in addition thereto, he shall be chief legal adviser of and attorney and counsel for the municipality and of all departments and offices thereof and shall perform such other duties as may be required by the commission.

(3) He shall qualify by taking the oath of office prescribed by the constitution and giving a bond in the amount required of a public administrator in a county of the same class. He shall receive from the state as part of his salary the same amount which is paid by the state to county attorneys in counties of the same class, and the remainder of his salary shall be paid by the municipality. For all purposes in connection with criminal prosecutions he shall be known and designated as "county attorney of the city and county of .....".

History: En. Sec. 44, Ch. 121, L. 1923; re-en. Sec. 5520.44, R.C.M. 1935; R.C.M. 1947, 11-3444; amd. Sec. 13, Ch. 262, L. 1979.

7-3-1342. City court. (1) A city court is established in and for each municipality, with the jurisdiction, powers, and duties within the municipality provided by general law for city courts in cities and towns and for justices of the peace.

(2) The commission shall by ordinance determine the number of judges required for operation of the city court. City court judges are to be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled general election. The term of office for city judge is 4 years.

(3) The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(4) Whenever a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term. The compensation of the city judge or judges shall be fixed by the commission.

History: En. Sec. 85, Ch. 121, L. 1923; re-en. Sec. 5520.86, R.C.M. 1935; R.C.M. 1947, 11-3526; amd. Sec. 14, Ch. 262, L. 1979.

7-3-1343. Police department. (1) The police department is in the charge of a director, who shall be chief of the police force of the municipality. The director shall have the powers and perform the duties conferred on and required of sheriffs.

(2) Officers and patrolmen of the police department, subordinate to the director, have the powers and duties conferred on and required of police officers and patrolmen in cities and towns by the laws of this state and such powers and duties as may be conferred and required by the ordinances of the municipality. Police officers and patrolmen have the powers and duties conferred on and required of deputy sheriffs by the general laws of the state.

(3) For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees, and orders of court, and making sales thereunder and returns thereof, the director shall be known and designated as Sheriff of the city and county of ...., and each police officer and patrolman shall be known and designated as deputy sheriff.

History: En. Sec. 77, Ch. 121, L. 1923; re-en. Sec. 5520.78, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1961; R.C.M. 1947, 11-3518(part); amd. Sec. 15, Ch. 262, L. 1979.

7-3-1344. Prior rights of law enforcement officers. (1) Any police officer employed by any police department or departments established as required by law in any city or town of the county prior to the election and qualification of a commission under this part and part 12 has the same job tenure rights as though no such election and qualification had taken place.

(2) Any such police officer who has vested rights in a police retirement fund shall maintain prior vested rights in the fund upon its transfer to a consolidated county municipality. Any police retirement fund established as required by law in any city or town of the county prior to the election and qualification of a commission under this part and part 12 shall be continued as such for the police department of the municipality, subject, however, to the prior vested rights of any police officer employed by any police department or departments established as required by law in any city or town of the county prior to the election and qualification of a commission under this part and part 12. The board of trustees of such police retirement fund shall consist of the president, the director of finance, the director of law, and two members of the police department from the active list of the police officers of the municipality who shall be selected by a majority vote of the members of the police department on the active list of the municipality. The selection shall be made between May 1 and May 10 each year, and the active police officer members of the board shall serve overlapping 2-year terms. Except as provided in this section, the police retirement fund shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

History: En. Sec. 77, Ch. 121, L. 1923; re-en. Sec. 5520.78, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1961; R.C.M. 1947, 11-3518(part); amd. Sec. 1, Ch. 114, L. 1979.

7-3-1345. Fire department. (1) The fire department of the municipality is in the charge of a director, who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

(2) (a) Notwithstanding any other provision of law, the adoption of a consolidated county municipal government shall have no effect on the existence, rights, or duties of any voluntary fire department or fire district created and legally in existence pursuant to the provisions of parts 21 and 23 of chapter 33.

(b) Nothing in this part or part 12 shall be construed to prohibit the creation of voluntary fire departments or fire districts pursuant to the provisions of parts 21 and 23 of chapter 33 within consolidated county municipalities.

(c) Voluntary fire departments or fire districts within consolidated county municipalities may only be organized, created, supported, financed, dissolved, and managed and their boundaries may only be changed pursuant to the provisions of parts 21 and 23 of chapter 33. These organizations may enter mutual aid agreements as provided by 7-33-2108.

History: En. Sec. 82, Ch. 121, L. 1923; re-en. Sec. 5520.83, R.C.M. 1935; amd. Sec. 1, Ch. 191, L. 1961; amd. Sec. 2, Ch. 2, L. 1965; R.C.M. 1947, 11-3523; amd. Sec. 16, Ch. 262, L. 1979.

7-3-1346. Department of health. The director of the department of health shall be a physician legally authorized to practice medicine and surgery in Montana. Except as otherwise provided in this part or part 12, the director of the department of health shall have the powers and perform the duties conferred on and required of coroners and county health officers and local health officers by the general laws of the state. He shall also have such other powers and perform such other duties as may be prescribed by ordinance.

History: **En. Sec. 80, Ch. 121, L. 1923; re-en. Sec. 5520.81, R.C.M. 1935; R.C.M. 1947, 11-3521.**

7-3-1347. County board of health. (1) The commission shall be the county board of health in and for the municipality, but in performing the duties and exercising the powers prescribed by law for such boards, the commission shall act by ordinance, resolution, or vote and according to the procedure prescribed by this part and part 12 to be followed when acting as commission of the municipality. It shall not be necessary to the validity of any such action for the commission to declare or for the records thereof to indicate that it is acting in other than its usual capacity.

(2) Regulations affecting the public health additional to those established by general law and for the violation of which penalties are imposed may be prescribed by ordinance and enforced as provided therein.

History: **En. Sec. 81, Ch. 121, L. 1923; re-en. Sec. 5520.82, R.C.M. 1935; R.C.M. 1947, 11-3522.**

7-3-1348. Superintendent of schools. The commission shall, by majority vote of all its members, appoint a municipal superintendent of schools to serve without definite term but subject to removal at the pleasure of the commission. The superintendent of schools for any district within the municipality may, with the consent of the trustees of such district, be appointed to serve as municipal superintendent. The compensation of the municipal superintendent shall be fixed by the commission, and he shall have the powers and perform the duties prescribed for county superintendents of schools by the laws of the state.

History: **En. Sec. 84, Ch. 121, L. 1923; re-en. Sec. 5520.85, R.C.M. 1935; R.C.M. 1947, 11-3525.**

Parts 14 through 20 reserved

Part 21

Optional Forms of County Government

7-3-2101. Authorization for optional form of county government. The electors of any county may adopt an alternative form of county government authorized by the provisions of this part. Upon adoption as provided by such part, said alternative form of government shall take the place of the form of government then existing in such county, and the sections of this part applicable to the adopted alternative form of government shall be controlling in such county as to all matters to which they relate, and other provisions of the general laws of the state shall be operative therein only insofar as they are not inconsistent with the aforesaid provisions.

History: **En. Sec. 2, Ch. 123, L. 1973; R.C.M. 1947, 16-5001.**

7-3-2102. Optional forms. An optional form of county government shall include:

(1) the elected county official form;
(2) the county commissioner form;
(3) the manager form; and
(4) the elected county executive form.

History: **En. Sec. 3, Ch. 123, L. 1973; R.C.M. 1947, 16-5002.**

7-3-2103. Procedure to select optional form — election required. (1) The board of county commissioners of any county may, by a two-thirds vote of the board, or shall, within 30 days, upon receipt of a petition signed by 15% of the electors of the county as determined by the number of votes cast therein for the office of governor at the last preceding gubernatorial election, by resolution submit in a referendum to the electors of the county the question of adopting a new form of county government authorized by this part.

(2) If more than one optional form of county government is presented to the county commissioners by petition, a primary election shall be held to determine the form to be submitted to the electors in a referendum.

(3) It shall be the duty of the board of county commissioners to submit the question at the next regular election or call a special election for the purpose. If a special election is called, it shall be held not more than 90 days or less than 60 days from the passage of the resolution, but not within 30 days of any general election.

(4) The question submitted shall be worded: "Shall the county of .... adopt the form of county government known as the .... (name of form) .... form."

History: **En. Sec. 4, Ch. 123, L. 1973; R.C.M. 1947, 16-5003(part).**

7-3-2104. Notice of election. It is the duty of the board of county commissioners to publish a notice of the referendum in a daily newspaper twice a week for a period of 3 consecutive weeks or, in case there is no daily newspaper of wide circulation in the county, then in a weekly newspaper for 4 consecutive weeks.

History: **En. Sec. 4, Ch. 123, L. 1973; R.C.M. 1947, 16-5003(2); amd. Sec. 17, Ch. 262, L. 1979.**

7-3-2105. Effect of vote of approval or disapproval. (1) If a majority of the votes cast on the question of adopting an optional form of county government is in the affirmative, it shall go into effect at a date designated in the petition or resolution; provided that no elected official then in office whose position will no longer be filled by popular election shall be retired prior to the expiration of his term of office, but from and after the establishment of the optional form of county government, his duties shall be such duties as are assigned to him by the person or body administering the optional form of government.

(2) If a majority of the voters disapprove, the existing form shall be continued and no new referendum may be held during the next 2 years following the date of disapproval.

History: **En. Sec. 5, Ch. 123, L. 1973; R.C.M. 1947, 16-5004.**

7-3-2106. Procedure to discontinue or change optional form. A proposition to discontinue an optional form of county government established under this part or to adopt another optional form of county government pursuant to this part may be submitted to the electors of the county at any general election in the manner provided for the submission of an optional form of county government under 7-3-2103 and 7-3-2104.

History: **En. Sec. 6, Ch. 123, L. 1973; R.C.M. 1947, 16-5005.**

7-3-2107. Effect of adoption or discontinuance of optional form. (1) The adoption or discontinuance of an optional form of county government in any county, as provided in this part, shall not affect any act done, ratified, or affirmed or any contract or other right or obligation, other than contracts for personal services, accrued or established or any action, prosecution, or proceeding, civil or criminal, pending at the time such change in form of government takes effect; nor shall the adoption or discontinuance of such form of county government affect such causes of action, prosecutions, or proceedings existing at the time it takes effect. Such rights shall attach to and actions, prosecutions, or proceedings may be prosecuted and continued or instituted and prosecuted against, by, or before the department having jurisdiction or power of the subject matter to which such action, prosecution, or proceedings pertains. All rules and orders lawfully promulgated prior to such adoption shall continue in force and effect until amended or rescinded in accordance with the sections of this part.

(2) On the effective date of the adoption or discontinuance of an optional form of county government causing a transfer of rights, duties, and powers from one department or office to another, all books, records, papers, documents, real and personal property, funds, appropriations and balances of appropriations, and pending business in any way pertaining to such rights, powers, and duties shall be similarly transferred.

History: **En. Sec. 7, Ch. 123, L. 1973; R.C.M. 1947, 16-5006.**

7-3-2108. Board of county commissioners required. (1) Any optional form of county government shall include a board of county commissioners, elected either at large as provided in 7-3-2109 or by districts as provided in 7-3-2110. The method of election shall be determined by inclusion of the method in the optional form adopted pursuant to 7-3-2102.

(2) The board shall consist of such number of members as shall be determined by inclusion of either three or five members in the optional form adopted pursuant to 7-3-2102.

History: **En. Sec. 8, Ch. 123, L. 1973; R.C.M. 1947, 16-5007.**

7-3-2109. Provisions for board elected at large. (1) Under all optional forms of county government whereby the entire board of county commissioners is elected at large, there shall be a board of county commissioners who shall have the qualifications and shall be nominated and elected as provided by general law except as otherwise provided for in this section.

(2) If the electors of a county approve a proposition to adopt an optional form of county government under this part and thereby adopt a different size board, the change in membership shall be effected as follows:

(a) Whenever the number of members of the board is increased, there shall be elected at the next regular state election following the adoption of such provision a sufficient number of county commissioners to bring the total membership of the board up to the number fixed.

(b) Whenever the number of members of the board is decreased, the optional number of county commissioners adopted under this part shall be effective as to the commissioner with the least time left on his term on the first Monday in January following the next regular state election and, as to the other half of the decrease, on the first Monday in January 2 years later. The latter decrease in board size shall also be determined by the least time left on his term and, should two commissioners have the same amount of term left to serve, then by lot.

(3) The term of office of county commissioners is 6 years except as provided in this section. If the optional form as adopted provides for no change in size of the board of county commissioners, county commissioners shall continue to be elected for 6-year terms.

(4) If the first election under an optional form of county government provided for in this part occurs in a year in which one county commissioner is to be elected under the former law and the optional form as adopted provides for an expansion of the board to five commissioners, there shall be elected for staggered terms two commissioners for a 6-year term and one commissioner for a 4-year term as provided in this part.

History: En. Sec. 9, Ch. 123, L. 1973; R.C.M. 1947, 16-5008; amd. Sec. 18, Ch. 262, L. 1979.

7-3-2110. Provisions for board elected by district. (1) Under all optional forms of county government whereby any members of the board of county commissioners are elected by districts, there shall be a board of county commissioners who shall be nominated and elected as provided by general law except as otherwise provided for in this section.

(2) The board shall consist of such number of members as provided in the proposition for the optional form that has been adopted.

(3) The division of the county into districts for county commissioners shall conform to the constitutional standards for division of the state into districts for election of members of the legislature. If the proposition for the optional form adopted provides that the county commissioners shall be elected by districts, the board of county commissioners shall, commencing in the first election under an optional form of county government, divide the county into county commissioner districts, using the most recent decennial federal census. The districts shall be reapportioned as soon as possible after each decennial federal census becomes available.

History: En. Sec. 10, Ch. 123, L. 1973; R.C.M. 1947, 16-5009.

7-3-2111. Organization of board. The board of county commissioners shall organize on the first Monday of each year, except when the first Monday of the year falls on a holiday, then the board shall organize on the first Tuesday of each year, by the election of one of its members as chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must by an order select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 12, Ch. 123, L. 1973; R.C.M. 1947, 16-5011.

7-3-2112. Conduct of board business. (1) The board of county commissioners shall determine its own rules and order of business and cause a record of its proceedings to be kept.

(2) No action of the board shall be valid or binding unless adopted by the affirmative vote of a majority of the members elected to the board.

History: En. Sec. 11, Ch. 123, L. 1973; R.C.M. 1947, 16-5010(part).

7-3-2113. Open meetings and records. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection free of charge.

History: En. Sec. 11, Ch. 123, L. 1973; R.C.M. 1947, 16-5010(part).

7-3-2114. Exercise of powers. The powers of a county as a body politic and corporate shall be vested in a board of county commissioners and exercised in the manner provided in this part.

History: En. Sec. 13, Ch. 123, L. 1973; R.C.M. 1947, 16-5012.

7-3-2115. Specific powers and duties of board. The board of county commissioners shall:

(1) be the policy determining body of the county and, except as otherwise provided by law, shall be vested with all the powers of the county, including power to levy taxes and to appropriate funds;

(2) have the power to create, organize, alter, consolidate, or abolish administrative units and transfer and assign their functions, powers, and duties;

(3) have all powers and duties vested in or imposed upon it by the general law except as otherwise provided for in this part;

(4) provide for the borrowing of money in anticipation of the collection of taxes and revenues for the current fiscal year;

(5) acquire, construct, maintain, administer, rent, and lease property, including buildings and other public improvements, as provided by law;

(6) cooperate with or join by contract pursuant to this part any city, county, state, or political subdivision or agency thereof or the United States or any agency thereof for the planning, development, construction, acquisition, or operation of any public improvement or facility or for a common service and may provide the terms upon which the county shall perform any of the services and functions of any municipality or political subdivision in the county;

(7) accept, in the name of the county, gifts, devises, bequests, and grants-in-aid from any person, firm, corporation, city, county, state, or political subdivision or agency thereof or from the United States or any agency thereof;

(8) request periodic or special reports by the county executive, county manager, elected officers, and administrative officers and bodies and may require their attendance upon its meetings;

(9) designate the maximum number of assistants, deputies, clerks, and other persons that may be employed in each of the offices and departments of the county;

(10) authorize the county executive or manager to employ experts and consultants in connection with the administration of the affairs of the county;

(11) establish procedures governing the making of county contracts and the purchasing of county supplies and equipment by competitive bidding;

(12) exercise control over expenditures by all county officials and promulgate and execute an allotment schedule allocating annual appropriations for

any county government purpose by item on either a monthly or quarterly basis;

(13) by ordinance or resolution make any rule or act in any manner provided by general law.

History: **En. Sec. 14, Ch. 123, L. 1973; R.C.M. 1947, 16-5013.**

7-3-2116. Performance of duties in absence of county executive or manager. In case of absence or disability of the county executive or manager, as determined by the board of county commissioners, his duties shall be performed during his absence or disability by whomsoever the board designates by resolution.

History: **En. Sec. 21, Ch. 123, L. 1973; R.C.M. 1947, 16-5018.**

7-3-2117. Procedure to establish compensation for officers and employees. (1) The board of county commissioners shall establish a schedule of compensation for officers and employees, which shall provide uniform compensation for like service, and such compensation shall be commensurate with and comparable to the compensation for a like service in commercial business. The schedule of compensation may establish a minimum and maximum for any class, and an increase in compensation, with the limits provided for by any class, may be granted at any time by the county manager, county executive, or other appointing authority upon the basis of efficiency and seniority records. None of the provisions of the law of this state with regard to the appointment or compensation of deputy county officers shall apply hereto.

(2) In the manager plan, the compensation of the county manager shall be fixed by the board of county commissioners.

(3) In the elected county executive plan, the compensation of the county executive shall be fixed by the board of county commissioners 1 year prior to the county executive's term of office. In the first year after adopting the county executive form of county government, the compensation for the county executive shall be 150% of that amount established for a member of the board of county commissioners in that county, figured on the basis of the commissioners working full time.

History: **En. Sec. 22, Ch. 123, L. 1973; R.C.M. 1947, 16-5019.**

7-3-2118 through 7-3-2130 reserved.

7-3-2131. Elected county official form. (1) The elected county official form of county government shall be that form in which the government is administered by a board of county commissioners and the following subordinate officials may be elected: a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a county auditor, a coroner, and a public administrator.

(2) There may be modification of the elected county official form adopted as provided in this section. The number of elected officials may vary by the right of the commissioners to consolidate or combine any two or more offices to cooperate with other units of local government in the sharing of any official.

(3) All the general laws of the state of Montana concerning this form of county government shall apply to the elected county official form of county government except as provided for in this part.

History: **En. Sec. 15, Ch. 123, L. 1973; R.C.M. 1947, 16-5014.**

7-3-2132. County commissioner form. The county commissioner form of county government shall be that form in which the government is administered by a board of county commissioners. The county commissioners may appoint those county officials as may be necessary for county operations and establish an adequate compensation plan for the duties required of each official. Those officials shall be appointed with regard to merit only and need not be a resident of the county prior to the time of their appointment. Under this form of county government, the board shall have the power to create, organize, alter, consolidate, or abolish administrative units of county government and transfer and assign their functions, powers, and duties.

History: **En. Sec. 18, Ch. 123, L. 1973; R.C.M. 1947, 16-5015.**

7-3-2133. Manager form. (1) The board of county commissioners may appoint a county manager, who shall be the administrative head of the county government which the board has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board the duties and powers of a manager, as hereinafter set forth, and under such circumstances, said chairman shall be considered a full-time chairman; or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties, and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation for all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties.

(2) It shall be the duty of the county manager:

(a) to see that all orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

History: **En. Sec. 19, Ch. 123, L. 1973; R.C.M. 1947, 16-5016.**

7-3-2134. Elected county executive form. (1) The elected county executive form of government shall be that form in which the government is administered by a single county official elected at large by the qualified voters of the county. The elected county executive shall be elected in the same manner as the other county officials. The board of county commissioners shall act as the legislative body of the county under this form of county government. The elected county executive shall be responsible for the administration of all departments of the county government. Qualifications for the office of elected county executive shall be the same as those for the board. Compensation for the elected county executive shall be established by the board, commensurate with and comparable to the compensation for a like service in commercial business.

(2) It shall be the duty of the elected county executive:

(a) to see that all the orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

(3) The powers of the elected county executive shall include the power to veto any ordinance or resolution adopted by the board of county commissioners. A veto by the county executive may apply to all or any items of an ordinance appropriating money. Certification of a veto must be made by the county executive within 10 days of its adoption by the board, and the board may override the veto by a two-thirds vote of all its members. Under the elected executive plan, an ordinance or resolution shall become effective upon approval by the county executive, expiration of such 10 days without approval or veto, or the overriding of a veto.

History: En. Sec. 20, Ch. 123, L. 1973; R.C.M. 1947, 16-5017.

Parts 22 through 40 reserved

Part 41

Strong Mayor Municipal Government

7-3-4101. Strong mayor form of municipal government. (1) The qualified electors of any city or town in this state may, in the manner provided in part 42 of chapter 5, cause an ordinance to be adopted which has as its subject the vesting of any or all of the following powers with the office of mayor of such city or town:

(a) to appoint and remove, without consent of the council, all nonelective officers of the city or town;

(b) to exercise absolute control over all departments and divisions of the city or town created in this title or that may be created by the council;

(c) to appoint one or more administrative assistants to assist him in the direction of the operations of the various city departments and agencies;

(d) to be solely responsible for the preparation of the annual budget in compliance with the procedures set forth in part 42 of chapter 6;

(e) to appoint a budget and finance director whose functions shall include the preparation of the annual municipal budget under the direction of the mayor.

(2) If any ordinance duly adopted in accordance with this section is in conflict with 7-4-4114, 7-4-4303 through 7-4-4306, 7-5-4102(1), 7-5-4122, 7-5-4205, and 7-5-4206, the provisions of this section shall prevail.

History: En. 11-802.1 by Sec. 1, Ch. 359, L. 1973; R.C.M. 1947, 11-802.1(part).

7-3-4102. Relationship of administrative assistants and budget and finance director to mayor. (1) The administrative assistants shall be answerable solely to the mayor.

(2) The budget and finance director shall be answerable solely to the mayor and shall serve at his pleasure.

History: En. 11-802.1 by Sec. 1, Ch. 359, L. 1973; R.C.M. 1947, 11-802.1(part).

Part 42

Municipal Commission Government

7-3-4201. Definitions. In the construction of this part, the following rules shall be observed unless such construction would be inconsistent with the manifest intent or repugnant to the context of the statute:

(1) The words "councilman" or "alderman" shall be construed to mean "councilman" when applied to cities under this part.

(2) When an office or officer is named in any law referred to in this part, it shall, when applied to cities under this part, be construed to mean the office or officer having the same function or duties under the provisions of this part or under ordinances passed under authority thereof.

(3) The words "franchise" or "right" shall include every special privilege in the streets, highways, and public places of the city, whether granted by the state or the city, which does not belong to citizens generally by common right.

(4) The word "electors" shall be construed to mean persons qualified to vote for elective offices at regular municipal elections.

History: En. Sec. 28, Ch. 57, L. 1911; re-en. Sec. 5393, R.C.M. 1921; re-en. Sec. 5393, R.C.M. 1935; R.C.M. 1947, 11-3131.

7-3-4202. Authorization for commission form of municipal government. Any city may abandon its organization and reorganize under the provisions of this part by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 57, L. 1911; re-en. Sec. 5366, R.C.M. 1921; re-en. Sec. 5366, R.C.M. 1935; R.C.M. 1947, 11-3101.

7-3-4203. Effect of part on other local government laws. All acts and parts of acts and all laws, not inconsistent with any of the provisions of this part, now in force or hereafter enacted relative to municipal corporations are hereby continued in full force and effect and shall be considered and construed as not repealed by this part except insofar as the same may be in conflict or inconsistent with the provisions of this part.

History: En. Sec. 34, Ch. 57, L. 1911; re-en. Sec. 5399, R.C.M. 1921; re-en. Sec. 5399, R.C.M. 1935; R.C.M. 1947, 11-3137.

7-3-4204. Laws governing city. All laws governing cities of the first, second, and third classes and not inconsistent with the provisions of this part shall apply to and govern cities organized under this part. All bylaws, ordinances, and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this part.

History: **En. Sec. 8, Ch. 57, L. 1911; re-en. Sec. 5373, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; R.C.M. 1947, 11-3108(part).**

7-3-4205. City to be governed by mayor and councilmen. Every city shall be governed by a mayor and councilmen, as provided in 7-3-4215, each of whom shall have the right to vote on all questions coming before the council.

History: **En. Sec. 15, Ch. 57, L. 1911; re-en. Sec. 5380, R.C.M. 1921; re-en. Sec. 5380, R.C.M. 1935; R.C.M. 1947, 11-3117.**

7-3-4206. Territorial limits and property. The territorial limits of such city shall remain the same as under the former organization, and all rights and property of every description which were vested in any such city under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it existing at the time and no suit or prosecution of any kind shall be affected by such change unless otherwise provided for in this part.

History: **En. Sec. 8, Ch. 57, L. 1911; re-en. Sec. 5373, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; R.C.M. 1947, 11-3108(part).**

7-3-4207. Requirements of petitions. Petitions provided for in this part shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides and his length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city stating that the signers thereof were, at the time of signing, legal voters of said city and the number of signers at the time the affidavit was made.

History: **En. Sec. 33, Ch. 57, L. 1911; re-en. Sec. 5398, R.C.M. 1921; re-en. Sec. 5398, R.C.M. 1935; amd. Sec. 2, Ch. 105, L. 1951; R.C.M. 1947, 11-3136.**

7-3-4208. Petition to organize under commission form — election required. (1) Upon a petition being filed with the city council, signed by not less than 25% of the qualified electors of such city registered for the last preceding general city election, praying that the question of reorganization under this part be submitted to the qualified electors of such city, said city council shall thereupon and within 30 days thereafter order a special election to be held. At this election the question of reorganization of such city under the provisions of this part shall be submitted to the qualified electors of such city.

(2) Such order of the city council shall specify therein the time when such election shall be held, which must be within 90 days from the date of the filing of such petition.

History: **En. Sec. 2, Ch. 57, L. 1911; amd. Sec. 1, Ch. 2, L. 1915; re-en. Sec. 5367, R.C.M. 1921; re-en. Sec. 5367, R.C.M. 1935; R.C.M. 1947, 11-3102.**

7-3-4209. Proclamation and notice of election. Upon the city council ordering such special election to be held, the mayor of such city shall issue a proclamation setting forth the purpose for which such special election is called and the date of holding such special election. The proclamation shall be published for 10 consecutive days in each daily newspaper published in said city if there be such; otherwise, once a week for 2 consecutive weeks in each weekly newspaper published therein; and such proclamation shall also be posted in at least five public places within such city.

History: En. Sec. 3, Ch. 57, L. 1911; re-en. Sec. 5368, R.C.M. 1921; re-en. Sec. 5368, R.C.M. 1935; R.C.M. 1947, 11-3103.

7-3-4210. Form of ballot. At such election the ballots to be used shall be printed upon plain white paper and shall be headed "Special election for the purpose of submitting to the qualified electors of the city of .... the question of reorganization of the city of .... under Chapter 57, Laws of 1911" and shall be substantially in the following form:

☐ FOR reorganization of the city of .... under chapter 57, Laws of 1911.

☐ AGAINST reorganization of the city of .... under chapter 57, Laws of 1911.

History: En. Sec. 4, Ch. 57, L. 1911; re-en. Sec. 5369, R.C.M. 1921; re-en. Sec. 5369, R.C.M. 1935; R.C.M. 1947, 11-3104(part).

7-3-4211. Conduct of election. Such election shall be conducted and vote canvassed and result declared in the same manner as provided by law in respect to other city elections.

History: En. Sec. 4, Ch. 57, L. 1911; re-en. Sec. 5369, R.C.M. 1921; re-en. Sec. 5369, R.C.M. 1935; R.C.M. 1947, 11-3104(part).

7-3-4212. Effect of vote on question. (1) If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder each a certificate stating that such proposition was adopted.

(2) If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such city within a period of 2 years thereafter.

History: En. Sec. 5, Ch. 57, L. 1911; re-en. Sec. 5370, R.C.M. 1921; re-en. Sec. 5370, R.C.M. 1935; R.C.M. 1947, 11-3105.

7-3-4213. Election for first city officers. (1) If a majority of the votes cast at such election shall be in favor of such proposition, the city council must, at its first regular meeting held thereafter, order a special election to be held for the purpose of electing a mayor and the number of councilmen to which such city shall be entitled. The order shall specify the time of holding such election, which must be within 90 days after the making of said order, and the mayor shall thereupon issue a proclamation setting forth the purposes for which such special election is called and the day of holding the same. The proclamation shall be published for 10 successive days in each daily newspaper published in such city if there be such; otherwise, once a week for 2 consecutive weeks in each weekly newspaper published therein; and a copy thereof shall also be posted at each voting place within said city and also in at least 10 of the most public places in said city.

(2) Such election shall be conducted, the vote canvassed, and result declared in the same manner as provided by law in respect to other city elections.

History: (1)En. Sec. 6, Ch. 57, L. 1911; amd. Sec. 2, Ch. 2, L. 1915; re-en. Sec. 5371, R.C.M. 1921; re-en. Sec. 5371, R.C.M. 1935; Sec. 11-3106, R.C.M. 1947; (2)En. Sec. 7, Ch. 57, L. 1911; re-en. Sec. 5372, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; Sec. 11-3107, R.C.M. 1947; R.C.M. 1947, 11-3106, 11-3107.

7-3-4214. First term of office. (1) The mayor and councilmen elected at such special election shall qualify and their terms of office shall begin on the first Monday after their election. The terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the term of office of the councilmen first elected under the provisions of this part shall then cease and determine, and the terms of office of all their appointed officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare.

(2) The terms of office of the mayor and all councilmen elected at such special election shall expire on the first Monday in January of the first even-numbered year following their election. At the first regular city election held in the year prior to the year in which the terms of office of the mayor and councilmen elected at such special election shall expire, a mayor and two councilmen shall be elected in cities having a population of less than 25,000. The mayor elected at such first general city election shall hold office for 4 years, one of the councilmen elected at such first city election shall hold office for 2 years, and the other of such councilmen elected at such first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election. A mayor and four councilmen shall be elected in cities having a population of 25,000 or more, and the mayor elected at such first general city election shall hold office for 4 years. Two of the councilmen elected at such first general city election shall hold office for 2 years, and the other two of the councilmen elected at such first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election.

(3) The councilmen elected at the first general city election shall decide by lot, in such manner as they may select, which thereof shall hold the office of councilman the term of which expires 2 years thereafter and which thereof shall hold the office of councilman the term of which expires 4 years thereafter.

History: En. Secs. 10, 11, Ch. 57, L. 1911; re-en. Secs. 5375, 5376, R.C.M. 1921; re-en. Secs. 5375, 5376, R.C.M. 1935; R.C.M. 1947; 11-3110, 11-3111(part); amd. Sec. 386, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-3-4215. Councilmen and mayor to be elected. (1) In every city of the third class, there shall be a mayor and two councilmen. In every city of the second class, there shall be a mayor and two councilmen. In every city of the first class having a population of less than 25,000, there shall be a mayor and two councilmen. In every city of the first class having a population of 25,000 or more, there shall be a mayor and four councilmen.

(2) The mayor and all councilmen shall be elected at large.

History: En. Sec. 9, Ch. 57, L. 1911; re-en. Sec. 5374, R.C.M. 1921; re-en. Sec. 5374, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1945; R.C.M. 1947, 11-3109(part).

7-3-4216. General term of office. The terms of office of the mayor and all councilmen elected after the first term shall be 2 years.

History: En. Sec. 11, Ch. 57, L. 1911; re-en. Sec. 5376, R.C.M. 1921; re-en. Sec. 5376, R.C.M. 1935; R.C.M. 1947, 11-3111(part).

7-3-4217. Oath of office and official bond. Every person who has been declared elected mayor or councilman shall, within 10 days thereafter, take and file with the city clerk an oath of office in the form and manner provided by law and shall execute and give sufficient bond to the municipal corporation in the sum of $10,000, conditioned for the faithful performance of the duties of the office. This bond shall be approved by the judge of the district court of the county in which such city is situated and filed with the clerk and recorder of the county in which such city is situated.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(9).

7-3-4218. Vacancies. (1) Vacancies in the office of mayor or councilmen shall be filled by appointment made by a majority vote of the remaining members of the council. If in filling such vacancy a tie vote should occur, then the person to fill said vacancy shall be determined by lot in such manner as said council may provide.

(2) A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

History: En. Sec. 9, Ch. 57, L. 1911; re-en. Sec. 5374, R.C.M. 1921; re-en. Sec. 5374, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1945; R.C.M. 1947, 11-3109(part).

7-3-4219. Council offices. The council shall have its office at the city hall.

History: En. Sec. 21, Ch. 57, L. 1911; re-en. Sec. 5386, R.C.M. 1921; re-en. Sec. 5386, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1945; amd. Sec. 1, Ch. 189, L. 1949; amd. Sec. 1, Ch. 87, L. 1951; R.C.M. 1947, 11-3123(part).

7-3-4220. Council meetings. (1) Regular meetings of the council shall be held on the first Monday after the election of councilmen and thereafter at least once each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two councilmen.

(2) All meetings of the council, whether regular or special, at which any person not a city officer is admitted shall be open to the public.

History: En. Sec. 22, Ch. 57, L. 1911; re-en. Sec. 5387, R.C.M. 1921; re-en. Sec. 5387, R.C.M. 1935; R.C.M. 1947, 11-3125(part).

7-3-4221. Conduct of business. (1) (a) In cities having a mayor and two councilmen, the mayor and one councilman or two councilmen shall constitute a quorum and the affirmative vote of the mayor and one councilman or the affirmative vote of two councilmen shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(b) In cities having a mayor and four councilmen, the mayor and two councilmen or three councilmen shall constitute a quorum and the affirmative vote of the mayor and two councilmen or the affirmative vote of three councilmen shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(2) Upon every vote the ayes and nays shall be called and recorded. Every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon. Every resolution or ordinance passed by the council must be signed by the mayor or by two councilmen and must be recorded before the same shall be in force.

(3) The mayor shall be president of the council and shall preside at its meetings and shall supervise all departments of the city and report and recommend to the council for its action all matters requiring attention in any department. The council shall, at its first regular meeting, select one of its members for vice-president of the council, and in case of a vacancy in the office of mayor or the absence or inability of the mayor, he shall perform the duties of the mayor.

History: (1), (2)Ap. p. Sec. 16, Ch. 57, L. 1911; re-en. Sec. 5381, R.C.M. 1921; re-en. Sec. 5381, R.C.M. 1935; Sec. 11-3118, R.C.M. 1947; Ap. p. Sec. 17, Ch. 57, L. 1911; re-en. Sec. 5382, R.C.M. 1921; re-en. Sec. 5382, R.C.M. 1935; Sec. 11-3119, R.C.M. 1947; (3)En. Sec. 22, Ch. 57, L. 1911; re-en. Sec. 5387, R.C.M. 1921; re-en. Sec. 5387, R.C.M. 1935; Sec. 11-3125, R.C.M. 1947; R.C.M. 1947, 11-3118, 11-3119(part), 11-3125(part).

7-3-4222. Adoption of ordinances. (1) Every ordinance or resolution appropriating money, ordering any street improvement or sewer, making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose shall be complete in the form in which it is finally passed and remain on file with the city clerk for public inspection at least 1 week before the final passage or adoption thereof.

(2) No ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this part and except an ordinance for the immediate preservation of the public peace, health, or safety which contains a statement of its urgency and is passed by a two-thirds vote of the council, shall go into effect before 10 days from the time of its final passage. If during the 10-day period a petition signed by electors of the city equal in number to at least 25% of the entire number of persons registered to vote at the last preceding general municipal election, protesting against the passage of such ordinance, is presented to the council, the ordinance shall thereupon be suspended from going into operation and the council shall reconsider the ordinance. If the ordinance is not entirely repealed, the council shall submit the ordinance to the vote of the electors of the city, either at a general election or at a special municipal election to be called for that purpose. The ordinance shall not go into effect or become operative unless a majority of the electors voting on the ordinance vote in favor of its adoption.

History: En. Secs. 23, 31, Ch. 57, L. 1911; re-en. Secs. 5388, 5396, R.C.M. 1921; re-en. Secs. 5388, 5396, R.C.M. 1935; R.C.M. 1947, 11-3126(part), 11-3134; amd. Sec. 38, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted references to the provisions of 7-3-4224; made minor changes in grammar, punctuation, and phraseology.

7-3-4223. Granting of franchises. No franchise or right to occupy or use the streets, highways, bridges, or public places in any such city shall be granted, renewed, or extended except by ordinance, and every franchise or grant for interurban or street railways, gasworks or waterworks, electric light or power plants, heating plants, telegraph or telephone systems, or other public service utilities or renewal or extension of any such franchise or grant within such city must be authorized or approved by a majority of the electors voting thereon at a general or special election as provided in 7-5-4321 and 7-5-4322.

History: **En. Sec. 23, Ch. 57, L. 1911; re-en. Sec. 5388, R.C.M. 1921; re-en. Sec. 5388, R.C.M. 1935; R.C.M. 1947, 11-3126(part).**

7-3-4224. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 30, Ch. 57, L. 1911; re-en. Sec. 5395, R.C.M. 1921; re-en. Sec. 5395, R.C.M. 1935; R.C.M. 1947, 11-3133(part).**

7-3-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 30, Ch. 57, L. 1911; re-en. Sec. 5395, R.C.M. 1921; re-en. Sec. 5395, R.C.M. 1935; R.C.M. 1947, 11-3133(part).**

7-3-4226. Repealed. Sec. 407, Ch. 571, L. 1979.

History: **En. Sec. 30, Ch. 57, L. 1911; re-en. Sec. 5395, R.C.M. 1921; re-en. Sec. 5395, R.C.M. 1935; R.C.M. 1947, 11-3133(part).**

7-3-4227. Abandonment of commission form. (1) Any city which has operated for more than 1 year under the provisions of this part may abandon such organization and accept the provisions of the general law of the state applicable to cities of its population.

(2) Upon the petition of not less than 10% of the electors of the city registered for the preceding general election, the following proposition shall be placed upon the ballot at the next regular city election, provided the petition is filed at least 60 days prior to the date of the election:

"Shall the city of (name of city) abandon its organization under chapter 57 of the acts of the twelfth legislative assembly and become a city under the general law governing cities of like population or, if formerly organized under special charter, resume the special charter?"

(3) If the majority of the votes cast at such election is in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of these officers, the city shall become a city under the general law of the state, but this change may not in any manner or degree affect the property, rights, or liabilities of any nature of the city but shall merely extend to each change in its form of government.

(4) Whenever the form of government of any city is determined by a vote of the people under the provision of this section, the same question may not be submitted again for a period of 2 years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of 2 years.

History: **En. Sec. 32, Ch. 57, L. 1911; amd. Sec. 1, Ch. 128, L. 1913; re-en. Sec. 5397, R.C.M. 1921; re-en. Sec. 5397, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1951; R.C.M. 1947, 11-3135; amd. Sec. 20, Ch. 262, L. 1979.**

7-3-4228 through 7-3-4230 reserved.

7-3-4231. General provisions related to elections. (1) All electors of cities under this part who, by ordinances governing cities incorporated under the general municipal incorporation law or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities shall be qualified to vote at all elections under this part.

(2) The ballots to be used at such general municipal election shall be in the same general form as for such primary elections so far as applicable; and in all elections in such cities the election precincts, voting places, method of conducting the elections, canvassing of votes, and announcing the results shall be the same as provided by law for the election of officers in such cities so far as the same are applicable and not inconsistent with the provisions of this part.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(8).

7-3-4232 through 7-3-4241. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-3-4232. En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(1).

7-3-4233. En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(2) thru (4).

7-3-4234. En. Sec. 1, Ch. 137, L. 1933; re-en. Sec. 5378.1, R.C.M. 1935; R.C.M. 1947, 11-3115.

7-3-4235. En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(part).

7-3-4236. En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(part).

7-3-4237. En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(part).

7-3-4238. En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(7).

7-3-4239. En. Sec. 1, Ch. 13, L. 1933; re-en. Sec. 5377.1, R.C.M. 1935; R.C.M. 1947, 11-3113.

7-3-4240. En. Sec. 13, Ch. 57, L. 1911; re-en. Sec. 5378, R.C.M. 1921; re-en. Sec. 5378, R.C.M. 1935; R.C.M. 1947, 11-3114.

7-3-4241. En. Sec. 14, Ch. 57, L. 1911; re-en. Sec. 5379, R.C.M. 1921; re-en. Sec. 5379, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1971; R.C.M. 1947, 11-3116.

7-3-4242 through 7-3-4250 reserved.

7-3-4251. Powers of mayor. The mayor shall:

(1) preside at all meetings of the council;

(2) have the same power to vote as other members of the council; and

(3) have no power to veto any measure.

History: En. Sec. 17, Ch. 57, L. 1911; re-en. Sec. 5382, R.C.M. 1921; re-en. Sec. 5382, R.C.M. 1935; R.C.M. 1947, 11-3119(part).

7-3-4252. Powers of council. The council shall have and possess and the council and its members shall exercise all executive, legislative, and judicial powers and duties now had, possessed, and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of waterworks trustees, board of library trustees, attorney, assessor, treasurer, auditor, city engineer, and other executive and administrative offices in cities organized under the general municipal incorporation laws.

History: **En. Sec. 18, Ch. 57, L. 1911; re-en. Sec. 5383, R.C.M. 1921; re-en. Sec. 5383, R.C.M. 1935; R.C.M. 1947, 11-3120(part).**

7-3-4253. Department structure and operation. (1) The executive and administrative powers, authority, and duties in such cities shall be distributed into and among departments as follows:

(a) in cities having a mayor and two councilmen, into three departments:

(i) a department of accounts, finance, and public property;

(ii) a department of public safety and charity;

(iii) a department of streets, public improvements, and parks;

(b) in cities having a mayor and four councilmen, into five departments:

(i) a department of public affairs;

(ii) a department of accounts and finance;

(iii) a department of public safety and charity;

(iv) a department of street and public improvements;

(v) a department of parks and public property.

(2) The council shall determine the powers and duties to be performed by each department of the city, shall prescribe the powers and duties of officers and employees, may assign particular officers and employees to one or more of the departments, may require an officer or employee to perform duties in two or more departments, and may make such rules as may be necessary or proper for the efficient and economical conduct of the business of the city.

History: **En. Sec. 18, Ch. 57, L. 1911; re-en. Sec. 5383, R.C.M. 1921; re-en. Sec. 5383, R.C.M. 1935; R.C.M. 1947, 11-3120(part).**

7-3-4254. Selection and supervision of officers and employees. (1) In cities having a mayor and two councilmen, the mayor shall be superintendent of the department of accounts, finance, and public property, and in cities having a mayor and four aldermen, the mayor shall be superintendent over the department of public affairs, and the mayor shall have general supervision over all departments of the city and over all matters connected with said city, and the council shall, at its first regular meeting after the election of its members, designate by majority vote one councilman to be superintendent over each department of the city, but such designation may be changed whenever it appears that the public service would be benefited thereby.

(2) The council shall, at its first regular meeting after the election of its members or as soon thereafter as practicable, elect by majority vote the following officers: a city clerk, a city treasurer, a city attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and such other officers and assistants as shall be provided for by ordinance and which may be necessary to the proper and efficient conduct of the affairs of the city. The council may by ordinance consolidate any of the offices the election to which is made by the council and may require any officer elected by the council to perform the duties of any other officer and shall appoint a city judge with the authority now conferred by existing laws. The tenure in office of a chief of the fire department and other officers of the fire department shall be governed by

the provisions of 7-33-4106 and 7-33-4122 through 7-33-4124. Any officer or assistant elected or appointed by the council may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this part.

(3) The council shall have power from time to time to create, fill, and discontinue offices and employment other than herein prescribed, according to their judgment of the needs of the city, and by majority vote of all the members to remove any such officer or employee, except as otherwise provided for in this part, and may by resolution or otherwise prescribe, limit, or change the compensation of such officers or employees.

History: (1), (2)En. Sec. 19, Ch. 57, L. 1911; re-en. Sec. 5384, R.C.M. 1921; re-en. Sec. 5384, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1943; Sec. 11-3121, R.C.M. 1947; (3)En. Sec. 20, Ch. 57, L. 1911; re-en. Sec. 5385, R.C.M. 1921; re-en. Sec. 5385, R.C.M. 1935; Sec. 11-3122, R.C.M. 1947; R.C.M. 1947, 11-3121, 11-3122.

7-3-4255. Compensation of mayor, council members, and employees. (1) The total compensation of councilmen shall be as follows:

(a) In cities of the third class having a population of less than 3,000, the annual salary of the mayor shall not exceed $600 and the annual salary of each councilman shall not exceed $500. In cities of the third class having a population of 3,000 or more, the annual salary of the mayor shall not exceed $1,000 and the annual salary of each councilman shall not exceed $900.

(b) In cities of the second class, the annual salary of the mayor shall not exceed $1,650 and the annual salary of each councilman shall not exceed $1,500.

(c) In cities of the first class having a population of less than 30,000, the annual salary of the mayor shall not exceed $4,500 and the annual salary of each councilman shall not exceed $3,800. In cities of the first class having a population of 30,000 and over, the annual salary of the mayor shall not exceed $4,800 and the annual salary of each councilman shall not exceed $4,000.

(2) Any increase in salary occasioned by the advance in class or increase in population of any city shall commence with the month next after the publication of the census showing such advance in class or increase in population.

(3) Every other officer or assistant shall receive such salary or compensation as the council shall by ordinance from time to time provide, payable in equal monthly installments.

(4) The salary or compensation of all other employees of such city shall be fixed by the council and shall be payable monthly or at such shorter periods as the council shall determine.

History: En. Sec. 21, Ch. 57, L. 1911; re-en. Sec. 5386, R.C.M. 1921; re-en. Sec. 5386, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1945; amd. Sec. 1, Ch. 189, L. 1949; amd. Sec. 1, Ch. 87, L. 1951; R.C.M. 1947, 11-3123(part).

7-3-4256. Control of conflict of interest. (1) No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any contract or job for work or materials or the profits thereof or materials, supplies, or services to be furnished or performed for the city. No such officer or employee shall be interested, directly or indirectly, in any contract or job for work or materials or the profits thereof or services to be furnished or performed for any person, firm, or corporation operating interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of said city. No such officer or employee shall accept or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of said city any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, or telephone exchange, or other business using or operating under a public franchise any frank, free pass, free ticket, or free service or accept or receive, directly or indirectly, from any such person, firm, or corporation any other service upon terms more favorable than is granted to the public generally. Such prohibition of free transportation shall not apply to policemen or firefighters in uniform, nor shall any free service to the city officials heretofore provided by any franchise or ordinance be affected by this section. Any officer or employee of such city who, by solicitation or otherwise, shall exert his influence, directly or indirectly, to influence other officers or employees of such city to adopt his political views or to favor any particular person or candidate for office or who shall in any manner contribute money, labor, or other valuable thing to any person for election purposes shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $300 or by imprisonment in the county jail not exceeding 30 days.

(2) Any violation of the provisions of this section shall be a misdemeanor, and every such contract and agreement shall be void.

History: En. Sec. 24, Ch. 57, L. 1911; re-en. Sec. 5389, R.C.M. 1921; re-en. Sec. 5389, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3127.

7-3-4257. Appointment of civil service commission. (1) Immediately after organizing, the council shall by ordinance appoint three civil service commissioners, who shall hold office, one until the first Monday in April in the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after his appointment. Each succeeding council shall, as soon as practicable after organizing, appoint one commissioner for 6 years, who shall take the place of a commissioner whose term of office expires. The chairman of the commission for each biennial period shall be the member whose term first expires. No person while on the said commission shall hold or be a candidate for any office of public trust. Two of said members shall constitute a quorum to transact business. The commissioners must be citizens of Montana and residents of the city for more than 3 years next preceding their appointment.

(2) Before entering upon the duties of his office, each of said commissioners shall take and subscribe an oath, which shall be filed and kept in the office of the city clerk, to support the constitution of the United States and of the state of Montana, to obey the laws, to aid to secure and maintain an honest and efficient force free from partisan distinction or control, and to perform the duties of his office to the best of his ability.

(3) The council may remove any of said commissioners during their term of office for cause, a majority of councilmen voting in favor of such removal, and shall fill any vacancy that shall occur in said commission for the unexpired term. The city council shall provide suitable rooms in which the said civil service commission shall hold its meetings; it shall have a clerk, who

shall keep a record of all its meetings, such city to supply the said commission with all necessary equipment to properly attend to such business.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(1) thru (3).

7-3-4258. Civil service examinations. Said commission shall, on the first Monday of April and October of each year or more often if it shall be deemed necessary, under such rules as may be prescribed by the council, hold examinations for the purpose of determining the qualifications of applicants for positions, which examination shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. Such commission shall, as soon as possible after such examination, certify to the council double the number of persons necessary to fill vacancies, who according to the records have the highest standing for the position they seek to fill as a result of such examination, and all vacancies which occur that come under the civil service prior to the date of the next regular examination shall be filled from said list so certified; provided, however, that should the list for any cause be reduced to less than three for any division, then the council or the head of the proper department may temporarily fill a vacancy, but not to exceed 30 days.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(4).

7-3-4259. Discharge of employees. All persons subject to such civil service examination shall be subject to removal from office or employment by the council for misconduct or failure to perform their duties under such rules as it may adopt, and the chief of police, chief of the fire department, or any superintendent or foreman in charge of municipal work may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders but shall, within 24 hours thereafter, report such suspension or discharge and the reason therefor to the superintendent of his department, who shall thereupon affirm or revoke such discharge or suspension according to the facts. Such employee (or the officer discharging or suspending him) may, within 5 days of such ruling, appeal therefrom to the council, which shall fully hear and determine the matter.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(5).

7-3-4260. Investigatory powers of council. The council shall have the power to enforce the attendance of witnesses and the production of books and papers and the power to administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction under the statutes of Montana.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(6).

7-3-4261. Conduct of civil service commission business. Said commissioners shall make an annual report to the council, and it may require a special report from said commissioners at any time. Said council may prescribe such rules for the proper conduct of the business of the commission as shall be found expedient and advisable, including restrictions on appointment, promotions, removals for cause, roster of employees, certificates of records to the auditors, and payment to persons improperly employed.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(7).

7-3-4262. Nonpartisan appointments and elections. All officers and employees in any said city shall be elected or appointed with reference to their qualifications and fitness and for the good of the public service and without reference to their political faith or party affiliations.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(10).

7-3-4263. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(part).

7-3-4264. Applicability of civil service provisions. The provisions of 7-3-4257 through 7-3-4265 shall apply to all appointive officers and employees of such city except those especially named in 7-3-4254, commissioners of any kind, laborers whose occupation requires no special skill or fitness, election officials, and mayor's secretary and assistant attorney, where such officers are appointed.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(9).

7-3-4265. Violations of civil service provisions. (1) The council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this part relating to the civil service commission.

(2) It shall be unlawful for any candidate for office in any such city, directly or indirectly, to give or promise any person or persons any office, position, employment, benefit, or anything of value for the purpose of influencing or obtaining the political support, aid, or vote of any person or persons.

(3) Any violation of the provisions of 7-3-4257 through 7-3-4265 shall be a misdemeanor and give ground for the removal from office.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(part).

7-3-4266. Report of proceedings and financial statement. The council shall monthly print in pamphlet form a detailed itemized statement of all of the receipts and expenses of the city and a summary of its proceedings during the preceding month and furnish printed copies of the statement to the state library, the city library, the daily newspaper of the city, and persons who apply for the statement at the office of the city clerk.

History: En. Sec. 26, Ch. 57, L. 1911; re-en. Sec. 5391, R.C.M. 1921; re-en. Sec. 5391, R.C.M. 1935; amd. Sec. 1, Ch. 52, L. 1943; amd. Sec. 55, Ch. 348, L. 1974; R.C.M. 1947, 11-3129.

7-3-4267. Revision of appropriations made by former council. If, at the beginning of the term of office of the first council elected in such city under the provisions of this part, the appropriations for the expenditures of the city government for the current fiscal year have been made, said council shall have power, by ordinance, to revise, repeal, or change said appropriations and to make additional appropriations.

History: En. Sec. 27, Ch. 57, L. 1911; re-en. Sec. 5392, R.C.M. 1921; re-en. Sec. 5392, R.C.M. 1935; R.C.M. 1947, 11-3130.

Part 43

Municipal Commission-Manager Government

7-3-4301. Authorization for commission-manager form of municipal government. (1) Any municipality may abandon its organization and reorganize under the provisions of this part and part 44 by proceeding as hereinafter provided.

(2) The form of government provided for in this part and part 44 shall be known as the commission-manager plan and shall consist of a commission of citizens, who shall be elected at large in the manner hereinafter provided.

History: (1)En. Sec. 1, Ch. 152, L. 1917; re-en. Sec. 5400, R.C.M. 1921; re-en. Sec. 5400, R.C.M. 1935; Sec. 11-3201, R.C.M. 1947; (2)En. Sec. 12, Ch. 152, L. 1917; re-en. Sec. 5410, R.C.M. 1921; re-en. Sec. 5410, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1943; Sec. 11-3211, R.C.M. 1947; R.C.M. 1947, 11-3201, 11-3211(part).

7-3-4302. Construction. (1) Except as otherwise provided in this part and part 44, all acts and parts of acts and all laws now in force or hereafter enacted relative to municipal corporations are hereby continued in full force and effect and shall be considered and construed as not repealed by this part and part 44 except insofar as the same may be in conflict or inconsistent with the provisions of this part and part 44.

(2) This part and part 44 do not repeal or modify Title 69, chapter 3 or 69-4-101, and this part and part 44 do not curtail or impair the power or authority of the public service commission, and any order made, action taken, or regulation provided by the commission shall supersede and nullify any order, regulation, ordinance, or other action authorized by this part or part 44 in conflict with any such order, regulation, or action of said public service commission. However, the annual report relating to the operation of a public utility owned by a municipality operating under this part and part 44 to be made to the public service commission shall conform to the fiscal year of the city or town.

History: (1)En. Sec. 118, Ch. 152, L. 1917; re-en. Sec. 5515, R.C.M. 1921; amd. Sec. 19, Ch. 31, L. 1923; re-en. Sec. 5515, R.C.M. 1935; Sec. 11-3331, R.C.M. 1947; (2)En. Sec. 119, Ch. 152, L. 1917; re-en. Sec. 5516, R.C.M. 1921; amd. Sec. 20, Ch. 31, L. 1923; re-en. Sec. 5516, R.C.M. 1935; amd. Sec. 6, Ch. 315, L. 1974; Sec. 11-3332, R.C.M. 1947; R.C.M. 1947, 11-3331, 11-3332.

7-3-4303. Laws governing municipality. (1) All laws governing municipalities of like population and not inconsistent with the provisions of this part and part 44 shall apply to and govern municipalities organized under this part and part 44. All bylaws, ordinances, and resolutions lawfully passed and in force in any such municipality under its organization, not in conflict herewith, shall remain in force until altered or repealed by the commission under the provisions of this part and part 44.

(2) The powers which are conferred and the duties which are imposed upon any officer, board, or commission or department of the municipality

under the laws of the state shall, if such officer, board, commission, or department is abolished by this part and part 44, be thereafter exercised and discharged by the officer, board, commission, or department upon whom are imposed corresponding functions, duties, and powers under the provisions of this part and part 44.

History: (1)En. Sec. 8, Ch. 152, L. 1917; re-en. Sec. 5407, R.C.M. 1921; re-en. Sec. 5407, R.C.M. 1935; Sec. 11-3208, R.C.M. 1947; (2)En. Sec. 112, Ch. 152, L. 1917; re-en. Sec. 5509, R.C.M. 1921; re-en. Sec. 5509, R.C.M. 1935; Sec. 11-3325, R.C.M. 1947; R.C.M. 1947, 11-3208(part), 11-3325(part).

7-3-4304. Territorial limits and property. The territorial limits of such municipality shall remain the same as under the former organization, and all rights and property of every description which were vested in any such municipality under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time and no suit or prosecution of any kind shall be affected by such change unless otherwise provided for in this part or part 44.

History: En. Sec. 8, Ch. 152, L. 1917; re-en. Sec. 5407, R.C.M. 1921; re-en. Sec. 5407, R.C.M. 1935; R.C.M. 1947, 11-3208(part).

7-3-4305. Petition to organize under commission-manager form — election required. (1) Upon a petition being filed with the city or town council, signed by not less than 25% of the qualified electors of such municipality registered for the last preceding general municipal election, praying that the question of reorganization under this part and part 44 be submitted to the qualified electors of such municipality, said city or town council shall thereupon and within 30 days thereafter order a special election to be held, at which election the question of reorganization of such municipality under the provisions of this part and part 44 shall be submitted to the qualified electors of such municipality.

(2) Such order of the city or town council shall specify therein the time when such election shall be held, which must be within 90 days from the date of filing of such petition.

History: En. Sec. 2, Ch. 152, L. 1917; re-en. Sec. 5401, R.C.M. 1921; re-en. Sec. 5401, R.C.M. 1935; R.C.M. 1947, 11-3202.

7-3-4306. Proclamation and notice of election. (1) Upon the city or town council ordering such special election to be held, the mayor of such municipality shall issue a proclamation setting forth the purpose for which such special election is held and the date of holding such special election.

(2) The proclamation shall be published for 10 consecutive days in each daily newspaper published in said municipality if there be such; otherwise, once a week for 2 consecutive weeks in each weekly newspaper published therein. Such proclamation shall also be posted in at least five public places within such municipality.

History: En. Sec. 3, Ch. 152, L. 1917; re-en. Sec. 5402, R.C.M. 1921; re-en. Sec. 5402, R.C.M. 1935; R.C.M. 1947, 11-3203.

7-3-4307. Form of ballot. At such election, the ballots to be used shall be printed on plain white paper and shall be headed "Special election for the purpose of submitting to the qualified electors of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly" and shall be substantially in the following form:

☐ FOR reorganization of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly.

☐ AGAINST reorganization of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly.

History: En. Sec. 4, Ch. 152, L. 1917; re-en. Sec. 5403, R.C.M. 1921; re-en. Sec. 5403, R.C.M. 1935; R.C.M. 1947, 11-3204(part).

7-3-4308. Conduct of election. Such election shall be conducted and the vote canvassed and the result declared in the same manner as provided by law in respect to other municipal elections.

History: En. Sec. 4, Ch. 152, L. 1917; re-en. Sec. 5403, R.C.M. 1921; re-en. Sec. 5403, R.C.M. 1935; R.C.M. 1947, 11-3204(part).

7-3-4309. Effect of vote on question of organization. (1) If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder each a certificate stating that such proposition was adopted.

(2) If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such municipality within a period of 2 years from the date of the last submission.

History: En. Sec. 5, Ch. 152, L. 1917; re-en. Sec. 5404, R.C.M. 1921; amd. Sec. 1, Ch. 31, L. 1923; re-en. Sec. 5404, R.C.M. 1935; R.C.M. 1947, 11-3205.

7-3-4310. Special election for municipal officers. (1) If the majority of the votes cast at such election shall be in favor of such proposition, the city or town council must hold a meeting within 1 week thereafter and at such meeting order a special election to be held for the purpose of electing the number of commissioners to which such municipality shall be entitled. This order shall specify the time of holding such election, which must be within 90 days after the making of such order, and the mayor shall thereupon issue a proclamation setting forth the purpose for which such special election is held and the day of holding the same. The proclamation shall be published for 10 successive days in each daily newspaper published in such municipality if there be such; otherwise, for 2 successive weeks in each weekly newspaper published therein; and a copy thereof shall also be posted at each voting place within said municipality and also in five of the most public places in said municipality.

(2) Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

(3) The provisions of 7-3-4341 are to be followed in the special election, except that the date of the primary election shall be at least 30 days before the special election.

History: (1)En. Sec. 6, Ch. 152, L. 1917; re-en. Sec. 5405, R.C.M. 1921; amd. Sec. 2, Ch. 31, L. 1923; re-en. Sec. 5405, R.C.M. 1935; Sec. 11-3206, R.C.M. 1947; (2), (3)En. Sec. 7, Ch. 152, L. 1917; re-en. Sec. 5406, R.C.M. 1921; re-en. Sec. 5406, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1973; Sec. 11-3207, R.C.M. 1947; R.C.M. 1947, 11-3206, 11-3207; amd. Sec. 39, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (3), substituted "7-3-4341 are" for "[7-3-4345 through 7-3-4347] and [7-3-4349(1)] are specifically"; deleted "The provisions of [7-3-4350] shall be applicable to subsection (2)" from the end of (3).

7-3-4311. Procedure for multimunicipality organization. (1) Whenever the inhabitants of any community or group of communities in any county, whether separately incorporated in whole or in part or unincorporated, which are situated in such proximity or location with reference to each other as to make single municipal control necessary or desirable, shall desire to be organized into or annexed to an incorporated city or town under the provisions of this part and part 44, the board of county commissioners of such county may or upon the presentation of a petition signed by not less than 25% of the qualified electors in such community or group of communities must issue a proclamation ordering a special election to be held.

(2) At this election the question of the organization of such community or group of communities as a municipality under the provisions of this part and part 44 shall be submitted to the qualified electors within the proposed municipal district. Said proclamation shall specify the time when and the places where such election shall be held, which must be within 90 days from the date of filing such petition, and shall define the boundaries of said proposed municipal district, which shall include all such communities and cities and such additional adjacent territory as shall, in the judgment of the board of county commissioners, provide for future urban growth.

(3) If a majority of the legal voters at said election vote in favor of the organization of such municipal district or in favor of annexation to an incorporated city or town, then the board of county commissioners shall declare the result of said election and immediately thereafter shall give notice for 30 days in a newspaper published within the proposed municipal district or, if none be published therein, by posting notices in six public places within the limits of said district of the time and place or places of holding the first election for commissioners of such municipal district under this law. At such election all electors qualified by the general election laws of the state who have resided within the limits of the municipal district for 6 months are qualified electors. The board of county commissioners must appoint judges and clerks of election and canvass and declare the result thereof. The election must be conducted in the manner prescribed by law for the election of county officers, and the commissioners so elected must qualify in the manner prescribed by law for county officers.

History: **En. Sec. 9, Ch. 152, L. 1917; amd. Sec. 1, Ch. 44, L. 1919; re-en. Sec. 5408, R.C.M. 1921; re-en. Sec. 5408, R.C.M. 1935; R.C.M. 1947, 11-3209.**

7-3-4312. Effect of organization of communities into single municipal district. (1) Whenever any group of communities shall become a single municipal district under the provisions of this law, the commissioners elected at the first election shall have the same functions and authority and municipal procedure in all respects shall be the same as is provided in this law where single communities, cities, or towns adopt the commission-manager form of government, and the terms of all municipal officers in any prior city or town which may be included in such new municipal district shall in like manner cease and terminate as soon as the commissioners shall by resolution so declare, and the corporate functions and existence of any such prior municipal corporation may in like manner be terminated by said commissioners when the need for the further existence of such prior corporation shall be at an end.

(2) Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, such municipal district shall bear the same name as the principal incorporated city or town in such district.

(3) Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, the corporate property of each such city or town shall become the property of the new municipality, but improvements paid for in whole or in part by special assessments upon abutting property within special improvement districts shall not be deemed municipal property within the meaning of this law to the extent of payments so made. If such prior city or town shall have an unpaid indebtedness, the commissioners of said new municipality elected at the first municipal election shall inventory and appraise or cause to be inventoried and appraised all of such property, and if the amount of the indebtedness of such prior city or town shall exceed the inventory value of the property surrendered to the new municipality by such prior city or town, then the excess of such indebtedness over the inventory value of said property shall be a charge only against the taxable property within the limits of such prior city or town and shall be paid by levy upon such property alone.

History: (1)En. Sec. 121, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5517, R.C.M. 1921; re-en. Sec. 5517, R.C.M. 1935; Sec. 11-3333, R.C.M. 1947; (2)En. Sec. 122, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5518, R.C.M. 1921; re-en. Sec. 5518, R.C.M. 1935; Sec. 11-3334, R.C.M. 1947; (3)En. Sec. 123, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5519, R.C.M. 1921; re-en. Sec. 5519, R.C.M. 1935; Sec. 11-3335, R.C.M. 1947; R.C.M. 1947, 11-3333, 11-3334, 11-3335.

7-3-4313. Powers of municipalities under commission-manager plan. (1) The inhabitants of any municipality coming under the provisions of this part and part 44, as its limits now are or may hereafter be, shall be a body politic and corporate and have a corporate name and as such shall have perpetual succession and may use a corporate seal. Through its duly elected officers, it may sue and be sued; may acquire property in fee simple or lesser interest or estate by purchase, gift, devise, appropriation, lease, or lease with the privilege to purchase for any municipal purpose; may sell, lease, hold, manage, and control such property and make any and all rules, by ordinance or resolution, which may be required to carry out fully all provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property; may acquire, construct, own, lease, and operate and regulate public utilities; may assess, levy, and collect taxes for general and special purposes on all the subjects or objects which the municipality may lawfully tax; may borrow money on the faith and credit of the municipality by the issue or sale of bonds or notes of the municipality; may appropriate money of the municipality for all lawful purposes; may create, provide for, construct, regulate and maintain all things of nature of public works and improvements; may levy and collect assessments for improvement districts and other local improvements; may license and regulate persons, corporations, and associations engaged in any business, occupation, profession, or trade; may define, prohibit, abate, suppress, and prevent all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the inhabitants of the municipality and all nuisances and the causes thereof; may regulate the construction, height, and the material used in all buildings and the maintenance and occupancy thereof; may regulate and control the use, for whatever purpose, of the streets and other public places; may create, establish, abolish, and organize offices and fix the salaries and compensation of all officers and employees; may make and enforce local sanitary and police and other regulations; and may pass such ordinances as may be expedient for maintaining and promoting peace, good government, and welfare of the municipality and for the performance of the functions thereof.

(2) The municipality shall have all powers that now are or hereafter may be granted to municipalities by the constitution or laws of Montana. All such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this part and part 44 or, when not prescribed therein, in such manner as shall be prescribed by the ordinances or resolutions of the commission.

History: **En. Sec. 10, Ch. 152, L. 1917; re-en. Sec. 5409, R.C.M. 1921; re-en. Sec. 5409, R.C.M. 1935; R.C.M. 1947, 11-3210.**

7-3-4314. Composition and general authority of commission. (1) The commission shall consist of three commissioners for all municipalities having a population of less than 15,000 and five commissioners for all cities having a population of 15,000 or more.

(2) The commission shall constitute the governing body, with powers as hereinafter provided to pass ordinances, adopt regulations, and appoint a chief administrative officer, to be known as the city manager, and to exercise all powers as hereinafter provided.

History: **En. Sec. 12, Ch. 152, L. 1917; re-en. Sec. 5410, R.C.M. 1921; re-en. Sec. 5410, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1943; R.C.M. 1947, 11-3211(part).**

7-3-4315. Qualifications of commissioners. Members of the commission shall be residents of the city or town and have the qualifications of electors.

History: **En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R.C.M. 1921; amd. Sec. 4, Ch. 31, L. 1923; re-en. Sec. 5413, R.C.M. 1935; amd. Sec. 1, Ch. 327, L. 1974; R.C.M. 1947, 11-3214(part).**

7-3-4316. Term of office for commissioners. (1) The commissioners elected at the first election shall qualify and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city or town in office at the beginning of the term of office of the commissioners first elected under the provisions of this part and part 44 shall cease and terminate and the terms of office of all their appointed officers and of all of the employees of such city or town shall cease and terminate as soon as the commissioners shall by resolution declare.

(2) All commissioners shall serve for a term of 4 years and until their successors are elected and have qualified, except that at the first election the two candidates having the highest number of votes shall hold office for a period of 4 years less the time elapsed since December 31 of the odd-numbered year last preceding. The terms of office of all other candidates shall expire on December 31 in any odd-numbered year following the special election provided for in this part at which the first commissioners are elected.

History: **En. Sec. 13, Ch. 152, L. 1917; re-en. Sec. 5411, R.C.M. 1921; amd. Sec. 3, Ch. 31, L. 1923; re-en. Sec. 5411, R.C.M. 1935; R.C.M. 1947, 11-3212.**

7-3-4317. Vacancies. Vacancies in the commission shall be filled by the commission for the remainder of the unexpired term, but any vacancy resulting from a recall shall be filled in the manner provided in such case.

History: En. Sec. 14, Ch. 152, L. 1917; re-en. Sec. 5412, R.C.M. 1921; re-en. Sec. 5412, R.C.M. 1935; R.C.M. 1947, 11-3213.

7-3-4318. Official oath. (1) Every person who has been declared elected commissioner shall, within 10 days thereafter, take and file with the clerk of the commission his oath of office in the form and manner provided by law.

(2) Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the constitutional oath of office, to be filed and kept in the office of the commission, that he will in all respects faithfully discharge the duties of his office.

History: (1)En. Sec. 45, Ch. 152, L. 1917; re-en. Sec. 5443, R.C.M. 1921; amd. Sec. 8, Ch. 31, L. 1923; re-en. Sec. 5443, R.C.M. 1935; amd. Sec. 9, Ch. 67, L. 1967; Sec. 11-3244, R.C.M. 1947; (2)En. Sec. 113, Ch. 152, L. 1917; re-en. Sec. 5510, R.C.M. 1921; re-en. Sec. 5510, R.C.M. 1935; amd. Sec. 2, Ch. 7, L. 1973; Sec. 11-3326, R.C.M. 1947; R.C.M. 1947, 11-3244, 11-3326.

7-3-4319. Designation of mayor. (1) The mayor shall be that member of the commission who, at the regular municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them shall be chosen mayor by the remaining members of the commission.

(2) In event of a vacancy in the office of the mayor by the expiration of his term of office, the holdover commissioner having received the highest number of votes shall be the mayor. In the event there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose his successor for the unexpired term from their own number by lot.

(3) In the event that the commissioner who is acting as mayor shall be recalled, the remaining members of the commission shall select one of their number to serve as mayor for the unexpired term. In the event of the recall of all the commissioners, the person receiving the highest number of votes at the election held to determine their successors shall serve as the mayor.

History: (1), (2)En. Sec. 46, Ch. 152, L. 1917; re-en. Sec. 5444, R.C.M. 1921; amd. Sec. 9, Ch. 31, L. 1923; re-en. Sec. 5444, R.C.M. 1935; Sec. 11-3245, R.C.M. 1947; (3)En. Sec. 47, Ch. 152, L. 1917; re-en. Sec. 5445, R.C.M. 1921; re-en. Sec. 5445, R.C.M. 1935; Sec. 11-3246, R.C.M. 1947; R.C.M. 1947, 11-3245(part), 11-3246.

7-3-4320. Role of mayor. The mayor shall be the presiding officer, except that in his absence, a president pro tempore may be chosen. The mayor shall exercise such powers conferred and perform all duties imposed upon him by this part and part 44, the ordinances of the municipality, and the laws of the state, except that he shall have no power to veto any measure. He shall be recognized as the official head of the municipality by the courts for the purpose of serving civil processes, by the governor for the purposes of the military law, and for all ceremonial purposes.

History: En. Sec. 46, Ch. 152, L. 1917; re-en. Sec. 5444, R.C.M. 1921; amd. Sec. 9, Ch. 31, L. 1923; re-en. Sec. 5444, R.C.M. 1935; R.C.M. 1947, 11-3245(part).

7-3-4321. Compensation of commissioners and mayor. The salary of each commissioner may be as follows: the salary of each commissioner shall be as established by ordinance in all classes of cities, and the salary of the commissioner acting as mayor may be 1 ½ times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R.C.M. 1921; re-en. Sec. 5447, R.C.M. 1935; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965; amd. Sec. 1, Ch. 289, L. 1969; amd. Sec. 1, Ch. 33, L. 1971; R.C.M. 1947, 11-3248.

7-3-4322. Meetings of commission. (1) At 10 a.m. on the first Monday after January 1 following a regular municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at such times as may be prescribed by ordinance or resolution, except that in municipalities having less than 5,000 inhabitants, they shall meet regularly at least once and not more than four times per month and in municipalities having more than 5,000 inhabitants, they shall meet not less than once every 2 weeks.

(2) Absence from five consecutive regular meetings shall operate to vacate the seat of a member unless such absence be authorized by the commission.

(3) The commissioner acting as mayor, any two members of the commission, or the city manager may call, special meetings of the commission upon at least 12 hours written notice to each member of the commission, served personally on each member or left at his usual place of residence.

History: En. Sec. 50, Ch. 152, L. 1917; re-en. Sec. 5448, R.C.M. 1921; amd. Sec. 10, Ch. 31, L. 1923; re-en. Sec. 5448, R.C.M. 1935; R.C.M. 1947, 11-3249(part).

7-3-4323. Conduct of commission business. (1) In municipalities having three commissioners, two commissioners shall constitute a quorum and the affirmative vote of two commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part or part 44. In municipalities having five commissioners, three commissioners shall constitute a quorum and the affirmative vote of three commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part or part 44.

(2) Upon every vote, the ayes and the nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon.

(3) All meetings of the commission shall be public and any citizen shall have access to the minutes and records thereof at all reasonable times. The commission shall determine its own rules and order of business and shall keep a journal of its proceedings.

(4) The commission shall choose a clerk and such other officers and employees of its own body as are necessary. The clerk shall be known as the clerk of the commission and shall keep records and perform such other duties as may be required by this part or part 44 or the commission.

History: (1), (2)En. Sec. 48, Ch. 152, L. 1917; re-en. Sec. 5446, R.C.M. 1921; re-en. Sec. 5446, R.C.M. 1935; Sec. 11-3247, R.C.M. 1947; (3)En. Sec. 50, Ch. 152, L. 1917; re-en. Sec. 5448, R.C.M. 1921; amd. Sec. 10, Ch. 31, L. 1923; re-en. Sec. 5448, R.C.M. 1935; Sec. 11-3249, R.C.M. 1947; (4)En. Sec. 53, Ch. 152, L. 1917; re-en. Sec. 5451, R.C.M. 1921; re-en. Sec. 5451, R.C.M. 1935; Sec. 11-3252, R.C.M. 1947; R.C.M. 1947, 11-3247, 11-3249(part), 11-3252.

7-3-4324. Procedure to enact ordinance or resolution. (1) Each proposed ordinance or resolution shall be introduced in written or printed form and shall not contain more than one subject, which shall be clearly stated in the title, but general appropriation ordinances may contain the various subjects and accounts for which money is to be appropriated. Every ordinance or resolution passed by the commission shall be signed by the mayor or two members and filed with the clerk within 2 days and by him recorded.

(2) The enacting clause of all ordinances passed by the commission shall be "Be it ordained by the commission of the (city or town) of (name of city or town)". The enacting clause of all ordinances submitted by the initiative shall be "Be it ordained by the people of the (city or town) of (name of city or town)".

(3) No ordinance, unless it be declared an emergency, shall be passed on the day on which it shall have been introduced unless so ordered by an affirmative vote of four-fifths of the members of the commission in cities with five commissioners and two-thirds of the members of the commission in all other cities and towns.

(4) No ordinance or resolution or section thereof shall be revised or amended unless the new ordinance or resolution contains the entire ordinance or resolution or section revised or amended.

(5) Every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer and the clerk of the commission. At least the number and title of every ordinance or resolution shall be published at least once within 10 days after its final passage in such manner as is provided in this part.

History: (1) thru (4)En. Sec. 51, Ch. 152, L. 1917; re-en. Sec. 5449, R.C.M. 1921; amd. Sec. 11, Ch. 31, L. 1923; re-en. Sec. 5449, R.C.M. 1935; Sec. 11-3250, R.C.M. 1947; (5)En. Sec. 55, Ch. 152, L. 1917; re-en. Sec. 5453, R.C.M. 1921; re-en. Sec. 5453, R.C.M. 1935; Sec. 11-3254, R.C.M. 1947; R.C.M. 1947, 11-3250, 11-3254.

7-3-4325. Effective date of ordinance or resolution. (1) All ordinances and resolutions shall be in effect from and after 30 days from the date of their passage by the commission except as otherwise provided in this part or part 44.

(2) The commission may, by an affirmative vote of all the members, pass emergency measures to take effect at the time indicated therein.

History: En. Sec. 52, Ch. 152, L. 1917; re-en. Sec. 5450, R.C.M. 1921; re-en. Sec. 5450, R.C.M. 1935; R.C.M. 1947, 11-3251(part).

7-3-4326. Emergency measures. (1) An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health, or safety or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto. Ordinances or resolutions appropriating money or ordering any street improvement or sewer, unless it is endangering the health or safety of the inhabitants, or granting any franchise or extension of franchise or other special privilege or regulating the rate to be charged for its services by any public utility or right to occupy or use the streets, highways, bridges, or other public places shall never be passed as emergency measures.

(2) Ordinances passed as emergency measures shall be subject to a referendum in like manner as other ordinances, except that they shall go into effect at the time indicated in such ordinances. If, when submitted to a vote of the electors, an emergency measure is not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure so repealed shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.

History: (1)En. Sec. 52, Ch. 152, L. 1917; re-en. Sec. 5450, R.C.M. 1921; re-en. Sec. 5450, R.C.M. 1935; Sec. 11-3251, R.C.M. 1947; (2)En. Sec. 43, Ch. 152, L. 1917; re-en. Sec. 5441, R.C.M. 1921; re-en. Sec. 5441, R.C.M. 1935; Sec. 11-3242, R.C.M. 1947; R.C.M. 1947, 11-3242, 11-3251(part).

7-3-4327. Petition for initiative. (1) Any proposed ordinance may be submitted to the commission by petition signed by at least 10% of the total number of registered voters in the municipality. All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full and have printed or written thereon the names and addresses of at least five electors who shall be officially regarded as filing the petition and shall constitute a committee of the petitioners for the purposes hereinafter named.

(2) Each signer of a petition shall sign his name in ink or indelible pencil and shall place on the petition papers, after his name, his place of residence by street and number. The signatures of any such petition papers need not all be appended to one paper, but to each such paper there shall be attached an affidavit by the circulator thereof, stating the number of signers to such part of the petition and that each signature appended to the paper is the genuine signature of the person whose name it purports to be and was made in the presence of the affiant.

(3) Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided for initiating ordinances.

(4) Initiated ordinances adopted by the electors shall be published and may be amended or repealed by the commission as in the case of other ordinances.

History: (1)En. Sec. 31, Ch. 152, L. 1917; re-en. Sec. 5429, R.C.M. 1921; re-en. Sec. 5429, R.C.M. 1935; Sec. 11-3230, R.C.M. 1947; (2)En. Sec. 32, Ch. 152, L. 1917; re-en. Sec. 5430, R.C.M. 1921; re-en. Sec. 5430, R.C.M. 1935; Sec. 11-3231, R.C.M. 1947; (3), (4)En. Sec. 37, Ch. 152, L. 1917; re-en. Sec. 5435, R.C.M. 1921; re-en. Sec. 5435, R.C.M. 1935; Sec. 11-3236, R.C.M. 1947; R.C.M. 1947, 11-3230, 11-3231, 11-3236.

7-3-4328 through 7-3-4333. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-3-4328. En. Sec. 33, Ch. 152, L. 1917; re-en. Sec. 5431, R.C.M. 1921; re-en. Sec. 5431, R.C.M. 1935; R.C.M. 1947, 11-3232(part).

7-3-4329. En. Sec. 33, Ch. 152, L. 1917; re-en. Sec. 5431, R.C.M. 1921; re-en. Sec. 5431, R.C.M. 1935; R.C.M. 1947, 11-3232(part).

7-3-4330. (1)En. Sec. 34, Ch. 152, L. 1917; re-en. Sec. 5432, R.C.M. 1921; re-en. Sec. 5432, R.C.M. 1935; Sec. 11-3233, R.C.M. 1947; (2)En. Sec. 35, Ch. 152, L. 1917; re-en. Sec. 5433, R.C.M. 1921; re-en. Sec. 5433, R.C.M. 1935; Sec. 11-3234, R.C.M. 1947; (3)En. Sec. 36, Ch. 152, L. 1917; re-en. Sec. 5434, R.C.M. 1921; re-en. Sec. 5434, R.C.M. 1935; Sec. 11-3235, R.C.M. 1947; R.C.M. 1947, 11-3233, 11-3234, 11-3235(part).

7-3-4331. En. Sec. 36, Ch. 152, L. 1917; re-en. Sec. 5434, R.C.M. 1921; re-en. Sec. 5434, R.C.M. 1935; R.C.M. 1947, 11-3235(part).

7-3-4332. (1)En. Sec. 38, Ch. 152, L. 1917; re-en. Sec. 5436, R.C.M. 1921; re-en. Sec. 5436, R.C.M. 1935; Sec. 11-3237, R.C.M. 1947; (2)En. Sec. 39, Ch. 152, L. 1917; re-en. Sec. 5437, R.C.M. 1921; re-en. Sec. 5437, R.C.M. 1935; Sec. 11-3238, R.C.M. 1947; (3)En. Sec. 40, Ch. 152, L. 1917; re-en. Sec. 5438, R.C.M. 1921; re-en. Sec. 5438, R.C.M. 1935; Sec. 11-3239, R.C.M. 1947; (4)En. Sec. 41, Ch. 152, L. 1917; re-en. Sec. 5439, R.C.M. 1921; re-en. Sec. 5439, R.C.M. 1935; Sec. 11-3240, R.C.M. 1947; (5)En. Sec. 42, Ch. 152, L. 1917; re-en. Sec. 5440, R.C.M. 1921; re-en. Sec. 5440, R.C.M. 1935; Sec. 11-3241, R.C.M. 1947; R.C.M. 1947, 11-3237(part), 11-3238, 11-3239, 11-3240, 11-3241.

7-3-4333. En. Sec. 44, Ch. 152, L. 1917; re-en. Sec. 5442, R.C.M. 1921; amd. Sec. 7, Ch. 31, L. 1923; re-en. Sec. 5442, R.C.M. 1935; R.C.M. 1947, 11-3243.

7-3-4334. Procedure to abandon commission-manager form of government. (1) Any municipality which shall have operated for more than 2 years under the provisions of this part and part 44 may abandon its organization hereunder and accept the provisions of the general law of the state applicable to municipalities of its population.

(2) Upon the petition of the registered electors of such municipality equal to 25% of the number registered for the last preceding general election, a special election shall be called, at which the following proposition only shall be submitted:

"Shall the (city or town) of (name of city or town) abandon its organization under parts 43 and 44 of chapter 3 of Title 7, MCA, and become a (city or town) under the general law governing (cities or towns) of like population or, if formerly organized under special charter, resume said special charter?"

(3) If the majority of the votes cast at the special election are in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general laws of the state for municipalities of like population, and upon the qualification of the officers, the municipality shall become a municipality under the general law of the state, but the change shall not in any manner or degree affect the property, rights, or liabilities of any nature of the municipality but shall merely extend to each change in its form of government.

(4) The sufficiency of the petition shall be determined, the election ordered and conducted, and the results declared as provided for by the provisions of Title 13 insofar as the provisions thereof are applicable. Whenever the form of government of a municipality is determined by a vote of the people under the provisions of this section, the same question may not be submitted again for a period of 2 years and any ordinance adopted by the vote of the people shall not be repealed or the same question submitted for a period of 2 years.

History: En. Sec. 117, Ch. 152, L. 1917; re-en. Sec. 5514, R.C.M. 1921; re-en. Sec. 5514, R.C.M. 1935; R.C.M. 1947, 11-3330; amd. Sec. 301, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-3-4335 through 7-3-4340 reserved.

7-3-4341. General provisions relating to elections. (1) Except as otherwise provided in this part and part 44, all elections shall be conducted as provided in Title 13.

(2) Elected officials provided for in this part and part 44 shall be nominated and elected under the provisions of Title 13, chapter 14, part 1.

History: En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; R.C.M. 1947, 11-3216(5); amd. Sec. 302, Ch. 571, L. 1979.

7-3-4342 through 7-3-4352. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-3-4342. En. Sec. 19, Ch. 152, L. 1917; re-en. Sec. 5417, R.C.M. 1921; re-en. Sec. 5417, R.C.M. 1935; R.C.M. 1947, 11-3218.

7-3-4343. En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; R.C.M. 1947 11-3216(1), (2).

7-3-4344. En. Sec. 18, Ch. 152, L. 1917; re-en. Sec. 5416, R.C.M. 1921; re-en. Sec. 5416, R.C.M. 1935; R.C.M. 1947, 11-3217.

7-3-4345. En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; R.C.M. 1947, 11-3215(1).

7-3-4346. En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; R.C.M. 1947, 11-3215(2), (3).

7-3-4347. (1), (2)En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; Sec. 11-3215, R.C.M. 1947; (3)En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; Sec. 11-3216, R.C.M. 1947; R.C.M. 1947, 11-3215(4), 11-3216(part).

7-3-4348. En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; R.C.M. 1947, 11-3216(part).

7-3-4349. (1)En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R.C.M. 1921; re-en. Sec. 5414, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1961; amd. Sec. 1, Ch. 2, L. 1973; amd. Sec. 9, Ch. 535, L. 1975; Sec. 11-3215, R.C.M. 1947; (2)En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; Sec. 11-3216, R.C.M. 1947; R.C.M. 1947, 11-3215(5), 11-3216(4).

7-3-4350. En. Sec. 1, Ch. 75, L. 1955; R.C.M. 1947, 11-3218.1.

7-3-4351. En. Sec. 20, Ch. 152, L. 1917; re-en. Sec. 5418, R.C.M. 1921; amd. Sec. 6, Ch. 31, L. 1923; re-en. Sec. 5418, R.C.M. 1935; R.C.M. 1947, 11-3219.

7-3-4352. (1)En. Sec. 29, Ch. 152, L. 1917; re-en. Sec. 5427, R.C.M. 1921; re-en. Sec. 5427, R.C.M. 1935; Sec. 11-3228, R.C.M. 1947; (2)En. Sec. 30, Ch. 152, L. 1917; re-en. Sec. 5428, R.C.M. 1921; re-en. Sec. 5428, R.C.M. 1935; amd. Sec. 2, Ch. 166, L. 1971; amd. Sec. 4, Ch. 100, L. 1973; Sec. 11-3229, R.C.M. 1947; R.C.M. 1947, 11-3228, 11-3229.

7-3-4353 through 7-3-4360 reserved.

7-3-4361. Appointment of city manager. The commission shall appoint a city manager. He shall be appointed without regard to his political beliefs and may or may not be a resident of the municipality when appointed. He shall hold office at the will of the commission.

History: En. Sec. 57, Ch. 152, L. 1917; re-en. Sec. 5455, R.C.M. 1921; re-en. Sec. 5455, R.C.M. 1935; R.C.M. 1947, 11-3256(part).

7-3-4362. Role of city manager. The city manager shall be the administrative head of the municipal government and shall be responsible for the efficient administration of all departments.

History: En. Sec. 57, Ch. 152, L. 1917; re-en. Sec. 5455, R.C.M. 1921; re-en. Sec. 5455, R.C.M. 1935; R.C.M. 1947, 11-3256(part).

7-3-4363. Powers and duties of city manager. The powers and duties of the city manager shall be:

(1) to see that the laws and ordinances are enforced;

(2) to appoint and, except as herein provided, remove all directors of departments and all subordinate officers and employees in the departments in both the classified and unclassified service; all appointments to be upon

merit and fitness alone and in the classified service all appointments to be subject to the civil service provisions of this part and part 44;

(3) to exercise control over all the departments and divisions created herein or that may hereafter be created by the commission;

(4) to attend all meetings of the commission, with the right to take part in the discussions but having no vote;

(5) to recommend to the commission for adoption such measures as he may deem necessary or expedient;

(6) to keep the commission fully advised as to the financial condition and needs of the city; and

(7) to perform such other duties as may be prescribed by this part or part 44 or be required of him by ordinance or resolution of the commission.

History: En. Sec. 58, Ch. 152, L. 1917; re-en. Sec. 5456, R.C.M. 1921; re-en. Sec. 5456, R.C.M. 1935; R.C.M. 1947, 11-3257.

7-3-4364. Compensation of city manager. The city manager shall receive such salary as may be fixed by ordinance of the commission, but such salary shall not be decreased during the term of office that the city manager is appointed for.

History: En. Sec. 59, Ch. 152, L. 1917; re-en. Sec. 5457, R.C.M. 1921; re-en. Sec. 5457, R.C.M. 1935; R.C.M. 1947, 11-3258.

7-3-4365. Investigations by commission. (1) The commission or any committee thereof duly authorized by the commission to do so may investigate the financial transactions of any office or department of the municipal government and the official acts of any municipal official and by similar investigations may secure information upon any matter.

(2) In conducting such investigations, the commission or any committee thereof may compel the attendance of witnesses and the production of books, papers, and other evidence and for that purpose may issue subpoenas or attachments, which shall be signed by the presiding officer of the commission or the chairman of such committee, as the case may be, and which may be served and executed by any officer authorized by law to serve subpoenas or other process. No witness may be excused from testifying touching his knowledge of the matter under investigation in any such inquiry, but such testimony may not be used against him in any criminal prosecution except for perjury committed upon such inquiry.

History: En. Sec. 56, Ch. 152, L. 1917; re-en. Sec 5454, R.C.M. 1921; re-en. Sec. 5454, R.C.M. 1935; R.C.M. 1947, 11-3255; amd. Sec. 24, Ch. 262, L. 1979.

7-3-4366. Investigatory powers of city manager. The city manager may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. Any person appointed by the city manager to examine the affairs of any department or the conduct of any officer or employee has the same power to compel the attendance of witnesses and the production of books and papers and other evidence as is conferred upon the commission by this part.

History: En. Sec. 60, Ch. 152, L. 1917; re-en. Sec. 5458, R.C.M. 1921; re-en. Sec. 5458, R.C.M. 1935; R.C.M. 1947, 11-3259; amd. Sec. 25, Ch. 262, L. 1979.

7-3-4367. Control of conflict of interest. (1) Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality and shall not hold any partisan political office or employment. Any commissioner who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office, and any such contract in which any member is or may be interested may be declared void by the commission.

(2) No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass, or service, directly or indirectly, from any person, firm, or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firefighters in uniform or wearing their official badges where the same is provided by ordinance or to any commissioner or to the city manager or to the city attorney upon official business, or to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

History: En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R.C.M. 1921; amd. Sec. 4, Ch. 31, L. 1923; re-en. Sec. 5413, R.C.M. 1935; amd. Sec. 1, Ch. 327, L. 1974; R.C.M. 1947, 11-3214(part).

7-3-4368. Execution of conveyances of real property. In all cities operating under the commission-manager form in Montana, the mayor is hereby designated as the proper officer to execute conveyances of real property; however, a majority of the commission may designate the city manager to execute a conveyance. In either case, the authority to act shall be authorized by the passage of a resolution.

History: En. Sec. 1, Ch. 54, L. 1955; R.C.M. 1947, 11-3286.

7-3-4369. Appropriation of property for public or municipal purposes. Property within the corporate limits of the municipality may be appropriated for any public or municipal purpose, and to the full extent of the authority granted by the constitution of the state, such appropriation shall be made as herein provided. By such appropriation, the municipality may acquire a fee simple title or any less estate, easement, or use. Appropriations of property outside of the corporate limits of the municipality shall be made according to the requirements of and as provided by general law.

History: En. Sec. 97, Ch. 152, L. 1917; re-en. Sec. 5495, R.C.M. 1921; re-en. Sec. 5495, R.C.M. 1935; R.C.M. 1947, 11-3311.

7-3-4370. Use of county buildings. Whenever any city organized under this part and part 44 includes the county seat of the county in which it is situated, any unused space in the county buildings in such city may be rented to the city commissioners for municipal use by the board of county commissioners for such rent as shall represent an income of not more than 6% upon the investment in such buildings proportionate to the space rented. Such commissioners may also contract with the board of county commissioners for the performance by county officials or employees of any kind of municipal work which can be feasibly performed by them. The compensation for such work shall be based upon additional cost to the county of its performance, and such compensation shall be paid into the general fund of such county unless otherwise provided by law.

History: En. Sec. 124, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5520, R.C.M. 1921; re-en. Sec. 5520, R.C.M. 1935; R.C.M. 1947, 11-3336.

7-3-4371. Estimate of expenditures and revenues. (1) The city manager shall submit to the commission an estimate of the expenditures and revenues of the municipal departments for the ensuing year. The estimate shall be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the city manager. The classification of the expenditures shall be as nearly uniform as possible for the main functional divisions of all departments and shall give in parallel columns the following information:

(a) a detailed estimate of the expenses of conducting each department as submitted by the department;

(b) expenditures for corresponding items for the last 2 fiscal years;

(c) expenditures for the corresponding items for the current fiscal year, including adjustments due to transfers between appropriations, plus an estimate of expenditure necessary to complete the current fiscal year;

(d) amount of supplies and materials on hand at the date of the preparation of the invoice;

(e) increase or decrease of requests compared with the corresponding appropriations for the current year;

(f) such other information as is required by the commission or that the city manager may deem advisable to submit;

(g) the recommendation of the city manager as to the amounts to be appropriated, with reasons therefor, in such detail as the commission may direct.

(2) A sufficient number of copies of such estimate shall be prepared and submitted that there may be copies on file in the office of the commission for inspection by the public.

History: En. Sec. 105, Ch. 152, L. 1917; re-en. Sec. 5502, R.C.M. 1921; amd. Sec. 17, Ch. 31, L. 1923; amd. Sec. 2, Ch. 173, L. 1925; re-en. Sec. 5502, R.C.M. 1935; amd. Sec. 1, Ch. 99, L. 1941; R.C.M. 1947, 11-3318(part).

7-3-4372. Procedure to enact appropriation ordinance. (1) Upon receipt of such estimate, the commission shall prepare an appropriation ordinance in such form as may be prescribed by ordinance or resolution. Before finally acting upon such tentative appropriation, the commission shall fix a time and place for holding public hearing upon the tentative appropriation and shall give public notice of such hearing. Following the public hearings and before its final passage, the appropriation ordinance shall be published with a parallel comparison with the recommendation of the city manager. The commission shall not pass the appropriation ordinance until 10 days after its publication or before the second Monday in August.

(2) If, at the beginning of the term of office of the first commission elected under the provisions of this part and part 44, the appropriations for the expenditures of the municipal government for the current fiscal year have been made, said commission shall have the power by ordinance to revise, repeal, or change said appropriations and to make additional appropriations.

History: (1)En. Sec. 106, Ch. 152, L. 1917; re-en. Sec. 5503, R.C.M. 1921; amd. Sec. 3, Ch. 173, L. 1925; re-en. Sec. 5503, R.C.M. 1935; amd. Sec. 2, Ch. 99, L. 1941; Sec. 11-3319, R.C.M. 1947; (2)En. Sec. 107, Ch. 152, L. 1917; re-en. Sec. 5504, R.C.M. 1921; re-en. Sec. 5504, R.C.M. 1935; Sec. 11-3320, R.C.M. 1947; R.C.M. 1947, 11-3319, 11-3320.

7-3-4373. Financial administration. (1) Upon request of the city manager, the commission may transfer any part of an unencumbered balance of an appropriation to a purpose or object for which the appropriation for the current year has proved insufficient or may authorize a transfer to be made between items appropriated to the same office or department.

(2) At the close of each fiscal year, the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated and shall be subject to future appropriations.

(3) Any accruing revenue of the municipality not appropriated as hereinbefore provided and any balance at any time remaining after the purpose of the appropriation shall have been satisfied or abandoned may from time to time be appropriated by the commission to such uses as will not conflict with any uses for which specifically such revenues accrued.

(4) No money shall be drawn from the treasury of the municipality, nor shall any obligation for the expenditure of money be incurred except pursuant to the appropriation made by the commission.

(5) All fees and money received or collected by officers and employees shall be paid into the city treasury.

History: (1)En. Sec. 108, Ch. 152, L. 1917; re-en. Sec. 5505, R.C.M.1921; re-en. Sec. 5505, R.C.M. 1935; Sec. 11-3321, R.C.M. 1947; (2) thru (4)En. Sec. 109, Ch. 152, L. 1917; re-en. Sec. 5506, R.C.M. 1921; re-en. Sec. 5506, R.C.M. 1935; Sec. 11-3322, R.C.M. 1947; (5)En. Sec. 110, Ch. 152, L. 1917; re-en. Sec. 5507, R.C.M. 1921; amd. Sec. 18, Ch. 31, L. 1923; amd. Sec. 4, Ch. 173, L. 1925; re-en. Sec. 5507, R.C.M. 1935; Sec. 11-3323, R.C.M. 1947; R.C.M. 1947, 11-3321, 11-3322, 11-3323(part).

7-3-4374. Details of public advertising or publication. All public advertising or publication mentioned as being necessary under the provisions of this part or part 44 shall be in a daily newspaper of general circulation within the municipality if there be such; otherwise, in a weekly newspaper published therein, and shall be done by contract, or in a journal published by the municipality, as may be determined by ordinance. If such contract shall be with a newspaper, it shall be entered into only after opportunity has been given for competition under such rules as the commission may establish and for a term not longer than 1 year.

History: En. Sec. 70, Ch. 152, L. 1917; re-en. Sec. 5468, R.C.M. 1921; re-en. Sec. 5468, R.C.M. 1935; R.C.M. 1947, 11-3269.

Part 44

Municipal Commission-Manager Government Continued

7-3-4401. Administrative departments. (1) The following administrative departments are hereby established:

(a) department of law;
(b) department of public service;
(c) department of public welfare;
(d) department of public safety;
(e) department of finance.

(2) The commission may by ordinance discontinue any or several departments and determine, combine, and distribute the functions and duties of these departments and subdivisions thereof.

History: En. Sec. 61, Ch. 152, L. 1917; re-en. Sec. 5459, R.C.M. 1921; re-en. Sec. 5459, R.C.M. 1935; R.C.M. 1947, 11-3260.

7-3-4402. Appointment of department directors. The city manager shall appoint a director for each department, as specified herein or as specified by ordinance of the commission, who shall serve until removed by the city manager or until his successor is appointed and has qualified.

History: En. Sec. 62, Ch. 152, L. 1917; re-en. Sec. 5460, R.C.M. 1921; re-en. Sec. 5460, R.C.M. 1935; R.C.M. 1947, 11-3261(part).

7-3-4403. Role of department director. Each director shall conduct the affairs of his department in accordance with the rules made by the city manager and shall be responsible for the conduct of the officers and employees of his department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control. Subject to the supervision and control of the city manager in all matters, the director of each department shall manage the department.

History: En. Sec. 62, Ch. 152, L. 1917; re-en. Sec. 5460, R.C.M. 1921; re-en. Sec. 5460, R.C.M. 1935; R.C.M. 1947, 11-3261(part).

7-3-4404. Appointment of boards. The commission may appoint a municipal plan board and, upon the request of the city manager, shall appoint advisory boards. The members of such boards shall serve without compensation, and their duty shall be to consult and advise with the various departments. The duties and powers thus created shall be prescribed by ordinance.

History: En. Sec. 63, Ch. 152, L. 1917; re-en. Sec. 5461, R.C.M. 1921; re-en. Sec. 5461, R.C.M. 1935; R.C.M. 1947, 11-3262.

7-3-4405. Establishment of civil service board. (1) The commission may appoint three electors of the municipality as a civil service board, with one to serve for 2 years, one for 4 years, and one for 6 years, and to take office on January 1 after the municipality comes under the provisions of this part and part 43 or as soon thereafter as appointed and qualified. Thereafter members of the civil service board shall be appointed to serve for 6 years and until their successors have been appointed and have qualified. The commission may remove any member of the board upon stating in writing the reasons for removal and allowing him an opportunity to be heard in his own defense. Any vacancy shall be filled by the commission for the unexpired term.

(2) Members of the board shall not hold any other public office.

(3) It is intended hereby that the establishment of a civil service board shall be permissive and not mandatory. If appointed the board may be abolished at any time upon resolution to that effect by the commission; and thereafter any civil service board appointed under the provisions of this part shall cease to exist, but so long as any such civil service board shall exist, its operations and proceedings shall be controlled as provided in this part.

(4) The salaries of the board and its employees shall be determined by the commission, and a sufficient sum shall be appropriated each year to carry out the civil service provisions of this part.

History: (1) thru (3)En. Sec. 73, Ch. 152, L. 1917; re-en. Sec. 5471, R.C.M. 1921; amd. Sec. 15, Ch. 31, L. 1923; re-en. Sec. 5471, R.C.M. 1935; Sec. 11-3272, R.C.M. 1947; (4)En. Sec. 86, Ch. 152, L. 1917; re-en. Sec. 5484, R.C.M. 1921; re-en. Sec. 5484, R.C.M. 1935; Sec. 11-3285, R.C.M. 1947; R.C.M. 1947, 11-3272(part), 11-3285.

7-3-4406. Organization of board. Immediately after appointment, the board shall organize by electing one of its members chairman. The board shall appoint a chief examiner, who shall also act as secretary. The board may appoint such other subordinates as may be provided for by appropriation.

History: En. Sec. 73, Ch. 152, L. 1917; re-en. Sec. 5471, R.C.M. 1921; amd. Sec. 15, Ch. 31, L. 1923; re-en. Sec. 5471, R.C.M. 1935; R.C.M. 1947, 11-3272(part).

7-3-4407. Classification of civil service. (1) The civil service of a municipality is hereby divided into the unclassified and the classified service.

(2) The unclassified service shall include:

(a) all officers elected by the people;

(b) the city manager;

(c) the heads of departments and heads of divisions of departments and members of appointive boards;

(d) the deputies and secretaries of the city manager and one assistant or deputy and one secretary for each department and the clerk of the commission.

(3) (a) The classified service shall comprise all positions not specifically included in this section in the unclassified service. There shall be in the classified service three classes, to be known as the competitive class, the noncompetitive class, and the labor class.

(b) The competitive class shall include all positions and employment for which it is practicable to determine the merit and fitness of applicants by competitive examination.

(c) The noncompetitive class shall consist of all positions and employment requiring peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character. No competitive examinations will be given for these positions, but the past achievements of the applicant will be considered.

(d) The labor class shall include ordinary unskilled labor which is employed by the year.

History: En. Sec. 74, Ch. 152, L. 1917; re-en. Sec. 5472, R.C.M. 1921; re-en. Sec. 5472, R.C.M. 1935; R.C.M. 1947, 11-3273.

7-3-4408. Role of civil service board. (1) The board, subject to the approval of the commission, shall adopt, amend, and enforce a code of rules providing for appointment and employment in all positions in the classified service, based on merit, efficiency, character, and industry, which shall have the force and effect of law and shall make investigations concerning the enforcement and effect of this part and part 43 and of the rules adopted. It shall make an annual report to the commission.

(2) The board shall provide for promotion to all positions in the classified service based on records of merit, efficiency, character, conduct, and seniority.

History: (1)En. Sec. 75, Ch. 152, L. 1917; re-en. Sec. 5473, R.C.M. 1921; re-en. Sec. 5473, R.C.M. 1935; Sec. 11-3274, R.C.M. 1947; (2)En. Sec. 77, Ch. 152, L. 1917; re-en. Sec. 5475, R.C.M. 1921; re-en. Sec. 5475, R.C.M. 1935; Sec. 11-3276, R.C.M. 1947; R.C.M. 1947, 11-3274, 11-3276.

7-3-4409. Role of chief examiner. The chief examiner shall be the employment officer of all municipal employees coming under the classified service. He shall provide examinations in accordance with the regulations of the board and maintain lists of eligibles of each class of the service of those meeting the requirements of said regulations. Positions in the classified service shall be filled by him from such eligible lists upon requisition from and after consultation with the city manager. As positions are filled, the employment officer shall certify the fact, by proper and prescribed form, to the director of finance and the director of the department in which the vacancy exists.

History: En. Sec. 76, Ch. 152, L. 1917; re-en. Sec. 5474, R.C.M. 1921; re-en. Sec. 5474, R.C.M. 1935; R.C.M. 1947, 11-3275.

7-3-4410. Probationary period. An appointment or promotion shall not be deemed complete until a period of probation, not to exceed 6 months, has elapsed; and a probationer may be discharged or reduced at any time within the period of 6 months upon the recommendation of the head of the department in which said probationer is employed, with the approval of the majority of the board.

History: En. Sec. 78, Ch. 152, L. 1917; re-en. Sec. 5476, R.C.M. 1921; re-en. Sec. 5476, R.C.M. 1935; R.C.M. 1947, 11-3277.

7-3-4411. Procedure for discharge, demotion, or suspension of employee. (1) An employee shall not be discharged or reduced in rank or compensation until he has been presented with the reasons for such discharge or reduction, specifically stated in writing, and has been given an opportunity to be heard in his own defense. The reason for such discharge or reduction and any reply in writing thereto by such employee shall be filed with the board.

(2) Any employee of any department in the municipality in the classified service who is suspended, reduced in rank, or dismissed from a department by the director of that department or the city manager may appeal from the decision of such officer to the civil service board, and such board shall define the manner, time, and place in which such appeal shall be heard. The judgment of such board shall be final.

History: (1)En. Sec. 79, Ch. 152, L. 1917; re-en. Sec. 5477, R.C.M. 1921; re-en. Sec. 5477, R.C.M. 1935; Sec. 11-3278, R.C.M. 1947; (2)En. Sec. 80, Ch. 152, L. 1917; re-en. Sec. 5478, R.C.M. 1921; re-en. Sec. 5478, R.C.M. 1935; Sec. 11-3279, R.C.M. 1947; R.C.M. 1947, 11-3278, 11-3279.

7-3-4412. Retention of existing positions. Any person in the employ of a municipality holding a position in the classified service at the time that the municipality comes under the provisions of this part and part 43 shall, unless his position be abolished, retain the same until discharged, reduced, promoted, or transferred in accordance herewith.

History: En. Sec. 81, Ch. 152, L. 1917; re-en. Sec. 5479, R.C.M. 1921; re-en. Sec. 5479, R.C.M. 1935; R.C.M. 1947, 11-3280.

7-3-4413. Certification required to receive salary. The director of finance or other public disbursing officer shall not pay any salary or compensation for services to any person holding a position in the classified service unless the payroll or account for such salary or compensation shall bear the certificate of the board, by its secretary, that the persons named therein have been appointed or employed and are performing service in accordance with the provisions of this part and part 43 or the rules established thereunder.

History: En. Sec. 82, Ch. 152, L. 1917; re-en. Sec. 5480, R.C.M. 1921; re-en. Sec. 5480, R.C.M. 1935; R.C.M. 1947, 11-3281.

7-3-4414. Investigatory powers of civil service board. In any investigation conducted by the board, it shall have the power to subpoena and require the attendance of witnesses and the production thereby of books and papers pertinent to the investigation and to administer oaths to such witnesses.

History: En. Sec. 83, Ch. 152, L. 1917; re-en. Sec. 5481, R.C.M. 1921; re-en. Sec. 5481, R.C.M. 1935; R.C.M. 1947, 11-3282.

7-3-4415. Prohibition on discrimination in employment. No person in the classified service or seeking admission thereto may be appointed, reduced, removed, or in any way favored or discriminated against because of political opinions or affiliations or because of race, color, creed, or religion.

History: En. Sec. 84, Ch. 152, L. 1917; re-en. Sec. 5482, R.C.M. 1921; re-en. Sec. 5482, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1975; amd. Sec. 1, Ch. 38, L. 1977; R.C.M. 1947, 11-3283.

7-3-4416. Violation of civil service provisions. The board, subject to the approval of the commission, shall by ordinance determine the penalties for the violation of the civil service provisions of this part.

History: En. Sec. 85, Ch. 152, L. 1917; re-en. Sec. 5483, R.C.M. 1921; re-en. Sec. 5483, R.C.M. 1935; R.C.M. 1947, 11-3284.

7-3-4417. Fixing compensation. (1) The commission shall fix, by annual salary ordinance, the salary or compensation of the city manager, the heads of the departments, and its own employees.

(2) The city manager shall fix the number and salaries or compensation of all other officers and employees.

(3) In cities where there is a civil service board as provided for in this part, the salary or compensation so fixed shall be uniform for like service in each grade of the service as the same shall be graded or classified by the city manager in accordance with the rules adopted by the civil service board. All such salaries and rates of pay shall be reported to the secretary of the civil service board.

History: En. Sec. 110, Ch. 152, L. 1917; re-en. Sec. 5507, R.C.M. 1921; amd. Sec. 18, Ch. 31, L. 1923; amd. Sec. 4, Ch. 173, L. 1925; re-en. Sec. 5507, R.C.M. 1935; R.C.M. 1947, 11-3323(part).

7-3-4418. Power to establish eight-hour day. The commission shall have the power to provide by ordinance that on any public work carried on by the municipality, whether done by contract or otherwise, not to exceed 8 hours shall constitute a day's work.

History: En. Sec. 115, Ch. 152, L. 1917; re-en. Sec. 5512, R.C.M. 1921; re-en. Sec. 5512, R.C.M. 1935; R.C.M. 1947, 11-3328.

7-3-4419 through 7-3-4430 reserved.

7-3-4431. Department of finance. (1) The duties of the director of finance shall include the keeping and supervision of all accounts and the custody of all public money of the municipality; the purchase, storage, and distribution of supplies needed by the various departments; the making and collection of special assessments; the issuance of licenses; the collection of license fees and taxes; and such other duties as the commission may by ordinance require.

(2) He shall install and have supervision over the accounts of all the departments and offices of the municipality. Whenever practicable the books of financial accounts shall be kept in the office of the department of finance. He shall require daily departmental reports of money receipts and the disposition thereof and shall require of each, in such form as may be prescribed, current financial and operating statements exhibiting each transaction and the cost thereof. Upon the death, resignation, removal or expiration of the term of any officer, he shall examine the accounts of such officer and report his findings to the city manager.

(3) He shall have charge of the preparation and certification of all special assessments for public improvements, the mailing of notices of such assessments to property owners and all other duties connected therewith, the collection of such assessments as are payable directly to the municipality, and the preparation and certification of all unpaid assessments to the county treasurer for collection. He shall issue all licenses and collect all fees therefor and shall pay the same into the treasury in the manner provided by ordinance.

(4) The director of finance shall be the custodian of all public money of the municipality and all other public money coming into his hands. He shall keep and preserve such money in the place or places determined by ordinance or by the provisions of any law applicable thereto. Except as otherwise provided in this part or part 43, he shall collect, receive, and disburse all public money of the municipality upon warrant and shall also receive and disburse all other public money coming into his hands in pursuance of such regulations as may be prescribed by the authorities having lawful control over such funds.

History: **En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(1) thru (3), (5), (7).**

7-3-4432. Accounting procedures. Accounting procedure shall be devised and maintained for the municipality, adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements. The recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules in detailed support thereof as may be necessary to show the full effect of such transactions for each fiscal year upon the finances of the municipality and in relation to each department of the municipal government, including distinct summaries and schedules for each publicly owned and operated utility.

History: **En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(4).**

7-3-4433. Claims and issuance of warrants. No warrant for the payment of any claim shall be issued unless such claim shall be evidenced by a voucher approved by the head of the department for which the indebtedness was incurred and countersigned by the city manager. Before issuing such voucher, the supplies and materials delivered or work done shall be duly inspected and certified to by the head of the proper department or office or by a person designated by him. The head of each department or office shall require proper time reports from all services rendered, to be certified by those having cognizance thereof, to serve as a basis for the preparation of payroll vouchers. Each director of a department and his surety shall be liable to the municipality for all loss or damage sustained by the municipality, by reason of the negligent or corrupt approval of any claim against the municipality in his department. Prior to the drawing of a warrant for the payment of any voucher or claim, the director of finance may at his discretion cause an investigation or inspection to be made by a person designated by him and shall have power to summon persons and examine them under oath or affirmation, which oath or affirmation he may administer.

History: **En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(6).**

7-3-4434. Purchase and sale of supplies and property. (1) The director of finance or city manager shall, in manner provided by ordinance, purchase all supplies for the municipality and sell all real and personal property of the municipality not needed or unsuitable for public use or that may have been condemned as useless by the director of a department. He shall have charge of such storerooms and storehouses of the municipality as may be provided by ordinance, in which shall be stored all supplies and materials purchased by the municipality and not delivered to the various departments.

(2) He shall inspect all supplies delivered to determine quality and quantity and conformance with specifications, and no voucher shall be honored unless the accompanying invoice shall be endorsed as approved.

(3) He may require from the director of each department, at such times as contracts for supplies are to be let, a requisition for the quantity and kind of supplies to be paid for from the appropriations of the department.

(4) Upon certification that funds are available in the proper appropriations, such goods shall be purchased and shall be paid for from funds in the proper department for that purpose. However, this procedure shall not prejudice the director of finance or city manager from purchasing goods for cash to the credit of the stores account to be furnished the several departments on requisition; goods so furnished to be paid for by the department furnished therewith by warrant made payable to the stores account.

(5) He shall not furnish any supplies to or purchase any supplies for any department unless there be to the credit of such department an available appropriation balance in excess of all unpaid obligations sufficient to pay for such supplies.

(6) Before making any purchase or sale, the director of finance or city manager shall give opportunity for competition, all proposals to be upon precise specifications and under such rules as the commission shall establish. Each order of purchase or sale, to be approved and countersigned by the city manager or his deputy.

(7) In cases of emergency, purchases may be made without competition if a sufficient appropriation has theretofore been made against which purchases may lawfully be charged. In such cases, a copy of the order issued shall be filed with the director of finance, together with a certificate by the head of the department stating the facts of the emergency. A copy of this certificate shall be attached to and filed with the voucher covering payment for the supplies. The director of finance shall have such assistants and force of office

employees as may be necessary to properly carry out his duties under the provisions of this part and part 43. If it is found desirable, he may divide his office into divisions presided over by the following officers: accountant, treasurer, and purchasing agent.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(8) thru (13).

7-3-4435. Approval required for certain contracts. No contract involving an expenditure of more than $250 for material or supplies shall be awarded except upon the approval of the city manager and the commission.

History: En. Sec. 71, Ch. 152, L. 1917; re-en. Sec. 5469, R.C.M. 1921; re-en. Sec. 5469, R.C.M. 1935; R.C.M. 1947, 11-3270.

7-3-4436. Sinking fund trustees. (1) The members of the commission, the city manager, and the director of finance shall constitute the sinking fund trustees. The mayor shall be the president and the director of finance shall be the secretary of the trustees of the sinking fund.

(2) The trustees of the sinking fund shall manage and control the sinking fund in the manner provided by laws of Montana or by ordinance.

History: En. Sec. 69, Ch. 152, L. 1917; re-en. Sec. 5467, R.C.M. 1921; re-en. Sec. 5467, R.C.M. 1935; R.C.M. 1947, 11-3268.

7-3-4437 through 7-3-4440 reserved.

7-3-4441. Department of public service. Subject to the control and supervision of the city manager in all matters, the director of public service shall manage and have charge of the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts, and other public highways; of sewers, drains, ditches, culverts, canals, streams, and watercourses; of boulevards, squares, and other public places and grounds belonging to the municipality or dedicated to public use, except parks and playgrounds. He shall manage market houses, sewage disposal plants and farms, and all public utilities of the municipality. He shall have charge of the enforcement of all obligations of privately owned or operated public utilities enforceable by the municipality. He shall have charge of the making and preservation of all surveys, maps, plans, drawings, and estimates for public work; the cleaning, sprinkling, and lighting of streets and public places; the collection and disposal of waste; and the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the department.

History: En. Sec. 65, Ch. 152, L. 1917; re-en. Sec. 5463, R.C.M. 1921; re-en. Sec. 5463, R.C.M. 1935; R.C.M. 1947, 11-3264.

7-3-4442. Local improvements. (1) The commission shall have the power by ordinance to provide for:

(a) the construction, reconstruction, repair, and maintenance, by contract or directly by the employment of labor, of all things in the nature of local improvements; and

(b) the payment of any part of the cost of any such improvement by levying and collecting special assessments upon abutting, adjacent, and contiguous or other specially benefited property, as provided by general law.

(2) Whenever the payments for such improvements are to extend over a period of years and are to be paid for in installments, the proceedings and all things done in connection with such improvements are to be done in strict conformity with the provisions of parts 41 and 42 of chapter 12.

History: En. Sec. 87, Ch. 152, L. 1917; re-en. Sec. 5485, R.C.M. 1921; re-en. Sec. 5485, R.C.M. 1935; R.C.M. 1947, 11-3301.

7-3-4443. Utility connections. (1) The director of public service shall have authority to compel the making of sewer, water, gas, and other connections whenever, in view of the contemplated street improvements or as a sanitary regulation, sewer, water, gas, or other connections should in his judgment be constructed.

(2) He shall cause written notice of his determination thereof to be given to the owner of each lot or parcel of land to which such connections are to be made. The notice shall state the number and character of connections required. Such notice shall be served by a person designated by the director of public service, in the manner provided for the service of summons in civil actions. Nonresidents of the municipality or persons who cannot be found may be served by one publication of such notice in a daily newspaper of general circulation in the municipality if such there be and, if not, by one publication in a weekly newspaper. The notice shall state the time within which such connections shall be constructed, and if they be not constructed within the time, the work may be done by the municipality and the cost thereof, together with a penalty of 5%, assessed against the lots and lands for which such connections are made; provided that the city commission may in its discretion order and direct that the cost of making any such connection by the municipality may be assessed without penalty and may be paid in annual installments over a period of not to exceed 8 years, together with interest thereon not to exceed 6% per annum payable annually on the deferred payments. Said assessments shall be certified and collected as other assessments for street improvements. The actual work of making such connections shall be done under such regulations as are provided for by ordinance.

History: En. Sec. 88, Ch. 152, L. 1917; re-en. Sec. 5486, R.C.M. 1921; re-en. Sec. 5486, R.C.M. 1935; amd. Sec. 1, Ch. 45, L. 1939; R.C.M. 1947, 11-3302.

7-3-4444. Supervision of plats. (1) The director of public service shall be the supervisor of plats of the municipality. He shall see that the regulations governing the platting of all lands require all streets and alleys to be of proper width and to be coterminous with the adjoining streets and alleys and that all other regulations are conformed with. Whenever he shall deem it expedient to plat any portion of the territory within the corporate limits in which the necessary or convenient streets and alleys have not already been accepted by the municipality so as to become public streets or alleys or when any person plats any land within the corporate limits or within 3 miles thereof, the supervisor of plats shall, if such plats are in accordance with the regulations prescribed therefor, endorse his written approval thereon.

(2) No plat subdividing lands within the corporate limits or within 3 miles thereof shall be entitled to record in the recorder's office of the county without such written approval so endorsed thereon.

History: En. Sec. 91, Ch. 152, L. 1917; re-en. Sec. 5489, R.C.M. 1921; re-en. Sec. 5489, R.C.M. 1935; R.C.M. 1947, 11-3305.

7-3-4445. Subdivided lands. Subdivisions in the municipality must conform to the provisions of Title 76, chapter 3.

History: En. Sec. 89, Ch. 152, L. 1917; re-en. Sec. 5487, R.C.M. 1921; amd. Sec. 16, Ch. 31, L. 1923; re-en. Sec. 5487, R.C.M. 1935; R.C.M. 1947, 11-3303; amd. Sec. 26, Ch. 262, L. 1979.

7-3-4446. Acceptance of streets or alleys. (1) No streets or alleys except those laid down on such plat and bearing the approval of the supervisor of plats, as hereinbefore provided, shall subsequently in any way be accepted as public streets or alleys by the municipality or shall any public funds be expended in the repair or improvement of streets or alleys subsequently laid out and not on such plat. This restriction shall not apply to a street or alley laid out by the municipality or to streets, alleys, or public grounds laid out on a plat by or with the approval of the supervisor of plats.

(2) No street or alley hereafter dedicated to public use by the proprietor of ground in the municipality shall be deemed a public street or alley or under the care or control of the commission unless the dedication be accepted and confirmed by ordinance passed for such purpose or unless the provisions hereof relating to subdivisions shall have been complied with.

History: (1)En. Sec. 92, Ch. 152, L. 1917; re-en. Sec. 5490, R.C.M. 1921; re-en. Sec. 5490, R.C.M. 1935; Sec. 11-3306, R.C.M. 1947; (2)En. Sec. 95, Ch. 152, L. 1917; re-en. Sec. 5493, R.C.M. 1921; re-en. Sec. 5493, R.C.M. 1935; Sec. 11-3309, R.C.M. 1947; R.C.M. 1947, 11-3306, 11-3309.

7-3-4447. Supervision of public places. (1) The commission shall provide by ordinance for the care, supervision, control, and improvement of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipality and shall cause them to be kept open, in repair, and free from nuisance.

(2) When it deems it necessary, the commission may cause any street, alley, or public highway to be opened, straightened, altered, diverted, narrowed, widened, or vacated.

History: (1)En. Sec. 93, Ch. 152, L. 1917; re-en. Sec. 5491, R.C.M. 1921; re-en. Sec. 5491, R.C.M. 1935; Sec. 11-3307, R.C.M. 1947; (2)En. Sec. 94, Ch. 152, L. 1917; re-en. Sec. 5492, R.C.M. 1921; re-en. Sec. 5492, R.C.M. 1935; Sec. 11-3308, R.C.M. 1947; R.C.M. 1947, 11-3307, 11-3308.

7-3-4448. Vacating or changing name of street. (1) The commission, in vacating any street or part of a street or changing the name of any street, may include in one ordinance the change of name or the vacation or narrowing of more than one street, alley, or avenue. Before vacating any street or part thereof or narrowing any street, the commission shall first pass a resolution declaring its intention to do so.

(2) The city manager shall serve notice of the resolution, in the manner that service of summons is required to be made in civil actions, upon all persons whose property abuts upon the portion of the street affected by the proposed vacation or narrowing and shall publish notice once in one daily newspaper of general circulation in the municipality if there is one or if not, once in one weekly newspaper of like circulation. The notice shall state the time and place at which objections will be heard.

(3) Unless at least 51% of the affected property owners object to the proposed vacation or narrowing, the commission may by ordinance declare such vacation or narrowing. The order of the commission vacating or narrowing a street or alley which has been dedicated to public use by the proprietor, to

the extent that it is vacated or narrowed, operates as a revocation of the acceptance thereof by the commission, but the right-of-way and easement therein of any lot owner is not impaired thereby.

History: En. Sec. 96, Ch. 152, L. 1917; re-en. Sec. 5494, R.C.M. 1921; re-en. Sec. 5494, R.C.M. 1935; R.C.M. 1947, 11-3310; amd. Sec. 27, Ch. 262, L. 1979.

7-3-4449. Grant of right to use or occupy public places. The commission shall have all powers to grant rights to occupy or use the streets, highways, bridges, or public places in the municipality that now are or hereafter may be granted to municipalities by the constitution or laws of Montana. Every ordinance or resolution passed by the commission granting the right to occupy or use streets, highways, or public places of municipalities shall be complete in the form in which it is finally passed and remain on file with the commission for inspection by the public for at least 1 week before the final adoption or passage thereof.

History: En. Sec. 98, Ch. 152, L. 1917; amd. Sec. 3, Ch. 44, L. 1919; re-en. Sec. 5496, R.C.M. 1921; re-en. Sec. 5496, R.C.M. 1935; R.C.M. 1947, 11-3312.

7-3-4450. Renewal of franchises. The commission may by ordinance renew any grant for the construction or operation of any utility, at its expiration, subject to petition and referendum as hereinbefore provided.

History: En. Sec. 99, Ch. 152, L. 1917; re-en. Sec. 5497, R.C.M. 1921; re-en. Sec. 5497, R.C.M. 1935; R.C.M. 1947, 11-3313.

7-3-4451. Prohibition on exclusive grant or franchise. No exclusive grant or renewal shall ever be granted, and no grant shall be renewed before 2 years prior to its expiration.

History: En. Sec. 100, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919; re-en. Sec. 5498, R.C.M. 1921; re-en. Sec. 5498, R.C.M. 1935; R.C.M. 1947, 11-3314.

7-3-4452. Grant to operate public utility. (1) The commission shall, in any ordinance granting or renewing any grant to construct and operate a public utility, prescribe the manner in which the streets and public grounds shall be used and occupied.

(2) The commission may by ordinance grant to any individual, company, or corporation operating a public utility the right to extend the appliances and service of such utility outside of the territory as designated by the franchise, subject to petition and referendum as hereinbefore stated. All such extensions shall become part of the aggregate property of the utility and shall be subject to all the obligations and reserved rights in favor of the municipality applicable to the property of the utility by virtue of the ordinance providing for its construction and operation. The right to use and maintain any such extension shall expire with the original grant of the utility to which the extension was made or any renewal thereof.

(3) No consent of the owner of property abutting on any highway or public ground shall be required for the construction, extension, and maintenance or operation of any public utility by original grant or renewal unless such public utility is of such character that its construction or operation is an additional burden upon the rights of the property owners in such highways or public grounds.

History: (1)En. Sec. 101, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919; re-en. Sec. 5499, R.C.M. 1921; re-en. Sec. 5499, R.C.M. 1935; Sec. 11-3315, R.C.M. 1947; (2)En. Sec. 103, Ch. 152, L. 1917;

re-en. Sec. 5500, R.C.M. 1921; re-en. Sec. 5500, R.C.M. 1935; Sec. 11-3316, R.C.M. 1947; (3)En. Sec. 104, Ch. 152, L. 1917; re-en. Sec. 5501, R.C.M. 1921; re-en. Sec. 5501, R.C.M. 1935; Sec. 11-3317, R.C.M. 1947; R.C.M. 1947, 11-3315, 11-3316, 11-3317.

7-3-4453. Assessments for snow, ice, weed, and rubbish removal. The commission shall have the power to provide by ordinance for assessing against the abutting property the cost of removing from the sidewalks all accumulation of snow and ice and for assessing against the property the cost of cutting and removing therefrom obnoxious weeds and rubbish.

History: En. Sec. 116, Ch. 152, L. 1917; re-en. Sec. 5513, R.C.M. 1921; re-en. Sec. 5513, R.C.M. 1935; R.C.M. 1947, 11-3329.

7-3-4454 through 7-3-4460 reserved.

7-3-4461. Department of law. (1) The head of the department of law shall be an attorney at law who has been admitted to practice in the state of Montana and shall be known as the city attorney.

(2) He shall be the legal adviser of and attorney and counsel for the municipality and for all the officers and departments thereof in matters relating to their official duties. He shall prosecute and defend all suits for and in behalf of the municipality and shall prepare all contracts, bonds, and other instruments in writing in which the municipality is concerned and shall endorse on each his approval of the form and correctness thereof. He shall have such other duties and authority as are now conferred upon the city attorney by existing laws.

(3) He shall have such number of assistants as the commission by ordinance may authorize.

History: En. Sec. 64, Ch. 152, L. 1917; re-en. Sec. 5462, R.C.M. 1921; re-en. Sec. 5462, R.C.M. 1935; R.C.M. 1947, 11-3263.

7-3-4462. Office of city judge. (1) In each municipality having a commission-manager form of government, a city judge shall be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled municipal election. The city judge shall hold office for a term of 4 years.

(2) The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(3) If a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term.

History: (1)En. Sec. 72, Ch. 152, L. 1917; re-en. Sec. 5470, R.C.M. 1921; amd. Sec. 14, Ch. 31, L. 1923; re-en. Sec. 5470, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1977; Sec. 11-3271, R.C.M. 1947; (2)En. 11-3271.1 by Sec. 2, Ch. 219, L. 1977; Sec. 11-3271.1, R.C.M. 1947; (3)En. 11-3271.3 by Sec. 4, Ch. 219, L. 1977; Sec. 11-3271.3, R.C.M. 1947; R.C.M. 1947, 11-3271, 11-3271.1, 11-3271.3.

7-3-4463. Department of public welfare. (1) Subject to the supervision and control of the city manager in all matters, the director of public welfare shall manage all charitable, correctional, and reformatory institutions and agencies belonging to the municipality and the use of all recreational facilities of the municipality, including libraries, parks, and playgrounds. He shall have charge of the inspection and supervision of public amusements and entertainments. He shall enforce all laws, ordinances, and regulations relative to the preservation and promotion of the public health; the prevention and restriction of disease; the prevention, abatement, and suppression of nuisances; and the sanitary inspection and supervision of the production, transportation, storage, and sale of foodstuffs. He shall cause a complete and accurate system of vital statistics to be kept. In time of epidemic or threatened epidemic, he may enforce such quarantine regulations as are appropriate to the emergency. The director of public welfare shall provide for the study of and research into causes of poverty, delinquency, crime, disease, and other social problems in the community and shall, by means of lectures and exhibits, promote the education and understanding of the community in those matters which affect the public welfare.

(2) The health officer of the municipality shall be under the direction and control of the director of public welfare and shall enforce all ordinances and laws relating to health and shall perform all duties and have all powers provided by general law relative to the public health to be exercised in municipalities by health officers. Regulations affecting the public health additional to those established by general law and for the violation of which penalties are imposed shall be enacted by the commission and enforced as provided herein.

History: **En. Sec. 66, Ch. 152, L. 1917; re-en. Sec. 5464, R.C.M. 1921; re-en. Sec. 5464, R.C.M. 1935; R.C.M. 1947, 11-3265.**

7-3-4464. Department of public safety. (1) Subject to the supervision and control of the city manager in all matters, the director of public safety shall be the executive head of the division of police and fire. He shall also be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair, and occupancy of buildings as may be ordained by the commission or established by the general law of Montana. He shall also be charged with the enforcement of all laws and ordinances relating to weights and measures.

(2) Nothing herein shall affect, impair, restrict, or repeal any provisions of general law authorizing the levying of taxes to provide for firefighters, police, and sanitary police pension funds and to create and perpetuate boards of trustees for the administration of such funds.

History: **En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(1), (6).**

7-3-4465. Police department. (1) The chief of police shall have exclusive control of the stationing and transfer of all patrolmen and other officers and employees constituting the police force, under such rules as the director of public safety may prescribe. The police force shall be composed of a chief of police and such officers, patrolmen, and other employees as the city manager may determine. In case of riot, in event of emergency, or at time of elections or similar occasions, the director of public safety may appoint additional patrolmen and officers for temporary service, who need not be in the classified service.

(2) No person shall act as special policeman, special detective, or other special police officer for any purpose whatsoever except upon the written authority of the director of public safety. Such authority shall be exercised

only under the direction and control of the chief of police and for a specified time.

(3) Section 7-4-4202(1) and (4), parts 2 and 41 of chapter 32, and chapters 9 and 10 of Title 19 shall in all respects be applicable to and govern the police departments of all cities and towns under the commission-manager form of government provided for herein.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(part).

7-3-4466. Fire department. (1) The fire chief shall have exclusive control of the stationing and transfer of all firefighters and other officers and employees constituting the fire force, under such rules as the director of public safety may prescribe. The fire force shall be composed of a chief and such other officers, firefighters, and employees as the city manager may from time to time determine. In case of riot, conflagration, or emergency, the director of public safety may appoint additional firefighters and other officers for temporary service, who need not be in the classified service.

(2) The provisions of part 41 of chapter 33 and chapter 11 of Title 19 shall in all respects be applicable to and govern fire departments of all cities and towns operating under the commission-manager plan of government.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(part).

CHAPTER 4

OFFICERS

Part 1 — General Provisions

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7-4-2701. Qualifications for county attorney in certain counties.
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7-4-2901. Appointment of deputy coroners.
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7-4-2903. Stenographer for coroner in certain counties.
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7-4-2911. Duties of county coroner.

7-4-2912. Coroner's register.
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Part 30 — Offices of Sheriff, County Treasurer, County Auditor, Public Administrator, County Superintendent of Schools, and Clerk of District Court

7-4-3001. Office of sheriff.
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Part 41 — Municipal Officers in General

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7-4-4105. Authority to abolish appointive municipal offices.
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Part 42 — Compensation of Municipal Officers

7-4-4201. Salary of officers.
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Part 43 — Office of Mayor

7-4-4301. Qualifications for mayor.
7-4-4302. Term of office.
7-4-4303. Powers of mayor related to municipal officers, personnel, and citizens.
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Part 44 — Office of Alderman

7-4-4401. Qualifications for alderman.
7-4-4402. Term of office.
7-4-4403. Officers of city or town council.

Part 45 — Office of Municipal Clerk

7-4-4501. Duties of city clerk related to administration.
7-4-4502. Duties of city clerk related to city records and papers.
7-4-4503. City ordinance book.
Sections 7-4-4504 through 7-4-4510 reserved.
7-4-4511. Duties of town clerk related to administration.
7-4-4512. Duties of town clerk related to town records and papers.
7-4-4513. Town ordinance book.

Part 46 — Office of City Attorney

7-4-4601. Qualifications for city attorney.
7-4-4602. Appointment — term of office.
7-4-4603. Removal or suspension.
7-4-4604. Duties.
7-4-4605. Employment of special or additional counsel.
7-4-4606. Legal services for city of third class.

Part 47 — Office of City Treasurer

7-4-4701. Term of office for city treasurer.

Part 1

General Provisions

7-4-101. Filing of oath of office. Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(1) in the office of the secretary of state for all officers whose authority is not limited to any particular county;

(2) in the office of the clerk of the respective county for all elected or appointed officers for any county, all officers whose duties are local or whose residence in any particular county is prescribed by law, and the clerks of the district courts.

History: En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; R.C.M. 1947, 59-417(part).

7-4-102. Office hours. Unless otherwise provided by law, every officer must keep his office open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except Saturdays and legal holidays. Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires, except county and city treasurers, who in their discretion may, in the interest of the safekeeping of funds, securities, and records under their control, close their offices during the period from noon to 1 p.m. every day.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part).

Parts 2 through 20 reserved

Part 21

County Commissioners

7-4-2101. Composition of board of county commissioners. Each county may have a board of county commissioners consisting of three members.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R.C.M. 1921; Cal. Pol. C. Sec. 4022; amd. Sec. 1, Ch. 118, L. 1933; re-en. Sec. 4452, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1973; R.C.M. 1947, 16-901(part).

7-4-2102. Division of county into commissioner districts. (1) In every county of the state, following each federal decennial census, the board of county commissioners shall divide their respective counties into three commissioner districts, as compact and equal in population and area as possible. Such apportionment may take place at any time for the purpose of equalizing in population and area such commissioner districts. However, no commissioner district shall at any time be changed to affect the term of office of any county commissioner who has been elected. No change in the boundaries of any commissioner district shall be made within 6 months next preceding a general election.

(2) The district judge or judges of the county shall review the action of the commissioners to determine whether or not such action meets the requirements of this section.

(3) Sections 7-4-2102 through 7-4-2104 shall not apply to counties adopting an optional or alternative form of government authorized by law.

History: (1), (2)En. 16-902.1 by Sec. 1, Ch. 298, L. 1974; Sec. 16-902.1, R.C.M. 1947; (3)En. 16-902.5 by Sec. 5, Ch. 298, L. 1974; Sec. 16-902.5, R.C.M. 1947; R.C.M. 1947, 16-902.1, 16-902.5.

7-4-2103. Filing of certificate designating districts. When such division of commissioner districts has been made, there shall be filed in the office of the county clerk and recorder of such county a certificate designating the metes and bounds of the boundary lines and limits of each commissioner district. The certificate shall be dated and signed by the district court judge or judges of the county.

History: En. 16-902.2 by Sec. 2, Ch. 298, L. 1974; R.C.M. 1947, 16-902.2.

7-4-2104. Commissioners to be elected by district. (1) At each general election, the member or members of the board of county commissioners to be elected shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county.

(2) No one shall be elected as a member of said board who has not resided in said district for at least 2 years next preceding the time when he shall become a candidate for said office.

History: En. 16-902.3 by Sec. 3, Ch. 298, L. 1974; R.C.M. 1947, 16-902.3.

7-4-2105. Term of office. The term of office of county commissioners is 6 years.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R.C.M. 1921; Cal. Pol. C. Sec. 4022; amd. Sec. 1, Ch. 118, L. 1933; re-en. Sec. 4452, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1973; R.C.M. 1947, 16-901(part).

7-4-2106. Vacancy on board of county commissioners. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the district judge or judges in whose district the vacancy occurs must fill the vacancy, and such appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4).

(3) Whenever a vacancy occurs 50 days or more before the general election held during the second or fourth year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 50 days or more before the primary election during the second or fourth year of the term, the same procedure shall be utilized as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the 50th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the clerk and recorder on or before the 40th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 50th day preceding the general election held during the fourth year of the term, the person appointed by the district judge under 7-4-2106(2) shall serve until the end of the term.

History: En. Sec. 4212, Pol. C. 1895; re-en. Sec. 2883, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1913; amd. Sec. 1, Ch. 28, L. 1921; re-en. Sec. 4454, R.C.M. 1921; Cal. Pol. C. Sec. 4026; re-en. Sec. 4454, R.C.M. 1935; R.C.M. 1947, 16-903; amd. Sec. 2, Ch. 526, L. 1979.

7-4-2107. Compensation of county commissioners. (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus $2,000.

(2) Each member of the board in all other counties is entitled to a salary of not more than $50 for each day in which he is actually and necessarily engaged in the performance of board duties as set by resolution of the board.

(3) This section does not apply to counties that have adopted a charter form of government.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R.C.M. 1921; re-en. Sec. 4464, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967;

amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973; amd. Sec. 6, Ch. 439, L. 1975; amd. Sec. 3, Ch. 493, L. 1977; R.C.M. 1947, 16-912(part); amd. Sec. 2, Ch. 518, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus $2,000" for "an annual salary to be established by resolution of the board in an amount not to exceed the annual salary established in the schedule in 7-4-2503 for the clerk and recorder" at the end of (1); and substituted (2) for "Each member of the board in all other counties is entitled to a salary to be established by the board by resolution in an amount not to exceed $40 per day for each day's attendance on the sessions of the board."

Effective Date: Section 5, Ch. 518, L. 1981, provided: "This act is effective July 1, 1981."

7-4-2108. Mileage allowance for county commissioners — expenses. (1) In addition to the salary provided by 7-4-2107(1), each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and his place of residence, each day that such trip is actually made and while engaged in the performance of his official duties.

(2) Each member of the board in all other counties is entitled to a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made to perform official duties. Any county commissioner whose place of residence is 50 miles or more from the county seat, as measured by the usual route of travel, and who elects to remain more than one day in the county seat to attend sessions of the board or perform his official duties is entitled to receive, in addition to mileage for one round trip between his place of residence and the county seat, $18 per day as expenses for each day's attendance on sessions of the board while engaged in the performance of his official duties.

(3) All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a county commissioner, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in this section. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(5) This section does not apply to counties that have adopted charter form of government.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R.C.M. 1921; re-en. Sec. 4464, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973; amd. Sec. 6, Ch. 439, L. 1975; amd. Sec. 3, Ch. 493, L. 1977; R.C.M. 1947, 16-912(part); amd. Sec. 1, Ch. 370, L. 1979.

7-4-2109. Chairman of board. The board of county commissioners must elect one of its members chairman. The chairman must preside at all meetings of the board and in case of his absence or inability to act, the members present must by an order select one of their number to act temporarily as chairman.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907; re-en. Sec. 4456, R.C.M. 1921; Cal. Pol. C. Sec. 4028; re-en. Sec. 4456, R.C.M. 1935; R.C.M. 1947, 16-905(part).

7-4-2110. Supervision of county and other officers. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to:

(1) supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, management, or disbursement of the public revenues;

(2) see that they faithfully perform their duties;

(3) direct prosecutions for delinquencies; and

(4) when necessary, require them to renew their official bonds, make reports, and present their books and accounts for inspection.

History: Secs. 4465-4465.29, R.C.M. 1935, en. as Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919; re-en. Sec. 4465, R.C.M. 1921; Cal. Pol. C. Sec. 4046; amd. Sec. 1, Ch. 95, L. 1923; amd. Sec. 1, Ch. 54, L. 1927; amd. Sec. 1, Ch. 38, L. 1929; Subd. 28 amd. Sec. 1, Ch. 142, L. 1929; amd. Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1965; R.C.M. 1947, 16-1001(part).

7-4-2111. Indemnity insurance for county officers. The board of county commissioners may in its discretion pay a proper charge to any insurance company authorized to do business in this state for effecting insurance providing indemnity for or protection to any county officer against his liability for the loss, without fault, connivance, or neglect on his part, of money, securities, or other property for which he is accountable to the county.

History: Secs. 4465-4465.29, R.C.M. 1935, en. as Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919; re-en. Sec. 4465, R.C.M. 1921; Cal. Pol. C. Sec. 4046; amd. Sec. 1, Ch. 95, L. 1923; amd. Sec. 1, Ch. 54, L. 1927; amd. Sec. 1, Ch. 38, L. 1929; Subd. 28 amd. Sec. 1, Ch. 142, L. 1929; amd. Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1965; R.C.M. 1947, 16-1001(part).

7-4-2112. County seal. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to adopt a seal for the board. A description and impression thereof must be filed by the clerk in the offices of the county clerk and the secretary of state.

History: En. Subd. 24, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.23, R.C.M. 1935; R.C.M. 1947, 16-1026.

7-4-2113. Liability on official bond of commissioner. In addition to any other penalty provided in this code, any county commissioner who neglects or refuses to perform any duty imposed on him without just cause therefor, who willfully violates any law provided for his government as such officer, who fraudulently or corruptly performs any duty imposed on him, or who willfully, fraudulently, or corruptly attempts to perform an act unauthorized by law as commissioner forfeits to the county $500 for every such act, to be recovered on his official bond, and is further liable on his official bond to any person injured thereby for all damages sustained.

History: En. Sec. 4295, Pol. C. 1895; re-en. Sec. 2954, Rev. C. 1907; re-en. Sec. 4520, R.C.M. 1921; Cal. Pol. C. Sec. 4086; re-en. Sec. 4520, R.C.M. 1935; R.C.M. 1947, 16-1161.

Part 22

County Officers in General

7-4-2201. General qualifications for county office. No person is eligible to a county office who at the time of his election is not:

(1) of the age of voting as required by the Montana constitution;

(2) a citizen of the state; and

(3) an elector of the county in which the duties of the office are to be exercised or for which he is elected.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R.C.M. 1921; Cal. Pol. C. Sec. 4101; re-en. Sec. 4723, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1971; R.C.M. 1947, 16-2401.

7-4-2202. General qualifications for district or township offices. No person is eligible to a district or township office who is not:

(1) of the age of voting as required by the Montana constitution;

(2) a citizen of the state; and

(3) an elector of the district or township in which the duties of the office are to be exercised or for which he is elected.

History: En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R.C.M. 1921; Cal. Pol. C. Sec. 4102; re-en. Sec. 4724, R.C.M. 1935; amd. Sec. 2, Ch. 423, L. 1971; R.C.M. 1947, 16-2402.

7-4-2203. County officers. (1) There may be elected or appointed the following county officers, who shall possess the qualifications for suffrage prescribed by the Montana constitution and such other qualifications as may be prescribed by law:

(a) one county attorney;

(b) one clerk of the district court;

(c) one county clerk;

(d) one sheriff;

(e) one treasurer;

(f) one auditor if authorized by 7-6-2401;

(g) one county superintendent of schools;

(h) one county surveyor;

(i) one assessor;

(j) one coroner;

(k) one public administrator; and

(l) at least one justice of the peace.

(2) The commissioners may appoint at their discretion constables. Not more than one constable may be appointed for each justice's court.

(3) All elective township officers may be elected at each general election as now provided by law.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 1, Ch. 443, L. 1979.

7-4-2204. Township officers. The officers of townships are as provided elsewhere in this code or by the board of county commissioners.

History: En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907; re-en. Sec. 4726, R.C.M. 1921; Cal. Pol. C. Sec. 4104; re-en. Sec. 4726, R.C.M. 1935; amd. Sec. 10, Ch. 491, L. 1973; amd. Sec. 2, Ch. 253, L. 1975; R.C.M. 1947, 16-2404.

7-4-2205. Term of office. (1) Persons elected to the different offices named in 7-4-2203 shall hold their respective offices for the term of 4 years and until their successors are elected and qualified.

(2) Persons appointed to the different offices serve at the pleasure of the commissioners.

(3) The officers mentioned in this part must take office on the first Monday of January succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part).

7-4-2206. Vacancies. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Vacancies in all county offices, except that of county commissioner, shall be filled by appointment by the board of county commissioners. Except for the justice of the peace, the appointee shall hold his office, if elective, until the next general election unless otherwise provided in subsections (3) or (4), and if not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs 50 days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 50 days or more before the primary election during the second year of the term, the same procedure shall be utilized as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs after the 50th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the clerk and recorder on or before the 40th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 50th day preceding the general election held during the second year of the term, the person appointed by the commissioners under 7-4-2206(2) shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace shall be filled as provided in Title 3, chapter 10, part 2.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 3, Ch. 526, L. 1979.

7-4-2207. Duty of officers to complete official business. It is the duty of all officers to complete the business of their respective offices to the time of the expiration of their respective terms. In case any officer, at the close of his term, leaves to his successor official labor to be performed for which he has received compensation or which it was his duty to perform, he is liable to pay to his successor the full value of such services, which may be recovered in any court of competent jurisdiction upon action brought against him on his official bond.

History: En. Sec. 4623, Pol. C. 1895; re-en. Sec. 3156, Rev. C. 1907; re-en. Sec. 4905, R.C.M. 1921; re-en. Sec. 4905, R.C.M. 1935; R.C.M. 1947, 25-221.

7-4-2208. Absence of county officers from state. (1) Except as provided in subsection (2), a county officer must in no case absent himself from the state for a period of more than 60 days and for no period longer than 5 days without the consent of the board of county commissioners, and if he does so absent himself, he forfeits his office.

(2) The sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with the permission of the board, for a period of more than 60 days for the sole purpose of attending a recognized and accredited law enforcement training school without effecting forfeiture of their offices.

History: En. Sec. 4326, Pol. C. 1895; re-en. Sec. 2971, Rev. C. 1907; re-en. Sec. 4739, R.C.M. 1921; Cal. Pol. C. Sec. 4120; re-en. Sec. 4739, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1947; R.C.M. 1947, 16-2417.

7-4-2209. Authority to administer oaths. Every officer mentioned in 7-4-2203(1) may administer and certify oaths.

History: En. Sec. 4325, Pol. C. 1895; re-en. Sec. 2970, Rev. C. 1907; re-en. Sec. 4738, R.C.M. 1921; Cal. Pol. C. Sec. 4118; re-en. Sec. 4738, R.C.M. 1935; R.C.M. 1947, 16-2416; amd. Sec. 2, Ch. 443, L. 1979.

7-4-2210. Restriction on practice of law by certain officers. (1) Sheriffs, clerks, constables, and their deputies are prohibited from practicing law or acting as attorneys or counselors at law or having as a partner a lawyer or one who acts as such.

(2) No county clerk, clerk of any court, or sheriff shall act as agent or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government or courts of the United States during his continuance in office.

History: (1)En. Sec. 4327, Pol. C. 1895; re-en. Sec. 2972, Rev. C. 1907; re-en. Sec. 4740, R.C.M. 1921; Cal. Pol. C. Sec. 4121; re-en. Sec. 4740, R.C.M. 1935; Sec. 16-2418, R.C.M. 1947; (2)En. Secs. 454, 455, p. 134, Bannack Stat.; re-en. Secs. 611, 612, p. 159, Cod. Stat. 1871; re-en. Secs. 531, 532, p. 179, L. 1877; re-en. Secs. 531, 532, 1st Div. Rev. Stat. 1879; re-en. Secs. 548, 549, 1st Div. Comp. Stat. 1887; re-en. Sec. 181, C. Civ. Proc. 1895; re-en. Sec. 6316, Rev. C. 1907; re-en. Sec. 8869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8869, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1963; Sec. 93-902, R.C.M. 1947; R.C.M. 1947, 16-2418, 93-902(part).

7-4-2211. County offices. (1) All county officers, except justices of the peace as set forth in 3-10-101, must keep their offices at the county seat.

(2) (a) The sheriff, the county clerk, the clerk of the district court, the treasurer, the county attorney, the county auditor in counties where such officer is maintained, and the county assessor must keep their offices open for the transaction of business from 8 a.m. until 5 p.m. continuously every day in the year except holidays and Saturdays; provided, however, that the offices enumerated herein shall be kept open on Saturdays and on holidays and at other times when the business of said offices requires them to be kept open.

(b) This subsection shall not apply to counties operating under the county manager plan.

History: (1)En. Sec. 4322, Pol. C. 1895; re-en. Sec. 2967, Rev. C. 1907; re-en. Sec. 4735, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4735, R.C.M 1935; amd. Sec. 2, Ch. 276, L. 1974; Sec. 16-2413, R.C.M. 1947; (2)En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; Sec. 16-2414, R.C.M. 1947; R.C.M. 1947, 16-2413, 16-2414(part).

7-4-2212. Official bonds of county officers. (1) The bonds of county officers are fixed by Title 2, chapter 9, part 7.

(2) Except in criminal prosecutions, whenever any special penalty, forfeiture, or liability is imposed on any officer for nonperformance or malperformance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

History: (1)New section recommended by code commissioner, 1921; re-en. Sec. 4743, R.C.M. 1935; Sec. 16-2421, R.C.M. 1947; (2)En. Sec. 4324, Pol. C. 1895; re-en. Sec. 2969, Rev. C. 1907; re-en. Sec. 4737, R.C.M. 1921; Cal. Pol. C. Sec. 4117; re-en. Sec. 4737, R.C.M. 1935; Sec. 16-2415, R.C.M. 1947; R.C.M. 1947, 16-2415, 16-2421.

7-4-2213. Inspection of official bonds. (1) At a regular meeting of the board of county commissioners in March and September of each year, the board of county commissioners shall carefully examine all official bonds of all county and township officials then in force and effect and investigate the qualifications and financial condition and liability of all sureties thereon and their sufficiency.

(2) If it appears to the satisfaction of the board or a majority of the members thereof that any surety upon any such bond has, since the approval and acceptance of such bond, died or withdrawn therefrom; left the state; disposed of all of his property in this state; or become mentally ill, insolvent, financially embarrassed, or not good and responsible for the amount of his liability thereon, the board shall immediately cause the clerk of the board to notify in writing the judge of the district court of that district of its action and conclusion and all facts in connection therewith and the reasons thereof.

(3) The judge shall take cognizance thereof and investigate such matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make such bond good and sufficient according to the requirements of law and ample security for the amount thereof.

History: En. Sec. 1, p. 92, L. 1901; re-en. Sec. 2978, Rev. C. 1907; re-en. Sec. 4744, R.C.M. 1921; re-en. Sec. 4744, R.C.M. 1935; R.C.M. 1947, 16-2422; amd. Sec. 3, Ch. 443, L. 1979.

7-4-2214 through 7-4-2220 reserved.

7-4-2221. Manner of keeping records and storing documents. (1) Whenever any officer of any county is required or authorized by law to record, copy, file, recopy, or replace any document, plat, paper, written instrument, or book on file or of record in his office, he may do so by photostatic, microphotographic, microfilm, or other mechanical process which produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record in accordance with standards not less than those now approved for permanent records by the national bureau of standards.

(2) Nothing in 7-4-2613 shall be construed as preventing the recording or photographing or copying of such instruments separately upon a single or

loose page or pages of a book if such page or pages shall immediately become a part of such book or volume which, when completed, shall be firmly bound and the pages thereof securely locked or sealed into the volume.

History: (1)En. Sec. 1, Ch. 117, L. 1959; Sec. 16-2428, R.C.M. 1947; (2)En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; Cal. Pol. C. Sec. 4235; re-en. Sec. 4796, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971; amd. Sec. 1, Ch. 199, L. 1975; amd. Sec. 19, Ch. 293, L. 1975; Sec. 16-2902, R.C.M. 1947; R.C.M. 1947, 16-2428, 16-2902(part).

7-4-2222. Substitution of reproduction for original document. (1) Any such document, plat, paper, written instrument, or book reproduced as provided in 7-4-2221(1), the original of which is not less than 10 years old, can be disposed of or destroyed only upon order of the district or probate court having jurisdiction, and the reproductions may be substituted therefor as public records.

(2) The photostatic, microphotographic, or microfilmed copy of any such record destroyed or disposed of as herein authorized or a certified copy thereof shall be admissible as evidence in any court or proceeding and shall have the same force and effect as though the original record had been produced and proved.

(3) It shall be the duty of the custodian of such records to prepare enlarged typed or photographic copies of the records whenever their production is required by law.

History: (1)En. Sec. 2, Ch. 117, L. 1959; Sec. 16-2429, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 117, L. 1959; Sec. 16-2430, R.C.M. 1947; R.C.M. 1947, 16-2429, 16-2430.

7-4-2223. Duplicate records — safe storage of one copy. (1) Whenever any record or document is copied or reproduced by microphotographic, microfilm, or other mechanical process as provided in 7-4-2221, it shall be made in duplicate.

(2) The custodian thereof shall place one copy, the contents thereof being first duly identified and indexed, in a fireproof vault or fireproof storage place. He shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than its original size or for preparing copies of the record for persons entitled thereto.

History: En. Sec. 4, Ch. 117, L. 1959; R.C.M. 1947, 16-2431.

Part 23

Consolidation of County Offices

7-4-2301. Authorization to consolidate county offices. (1) Except as provided in subsection (2), the board of county commissioners of any county may in its discretion consolidate any two or more of the offices named in 7-4-2203 and combine the powers and the duties of the consolidated offices.

(2) The office of the justice of the peace may not be combined or consolidated with any other office other than another justice of the peace office.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 4, Ch. 443, L. 1979.

7-4-2302. Petition for consolidation of county offices. (1) At any time not later than 7 months before the date of any general election at which any county officers are to be elected, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of such county.

(2) The petition shall be signed by not less than 15% of the qualified electors of such county whose names appear on the registration records thereof.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part).

7-4-2303. Petition for intercounty consolidation of offices. (1) A written petition may also be filed with the boards of county commissioners of counties asking for consolidation of any two or more offices among several counties.

(2) In the case of consolidation of offices among several counties, the petition shall be signed by not less than 15% of the qualified electors in each of the counties affected.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part).

7-4-2304. Petition details. (1) Said petition shall be addressed to the board or boards of county commissioners of the counties affected and shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary or desirable or for the best interests of the county taxpayers.

(2) Each person signing such petition shall place his post-office address and voting precinct after his name.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part).

7-4-2305. Initiation of consolidation by county commissioners. (1) The board or boards of county commissioners may initiate the consolidation of county offices under the procedure set forth in this part. Any board or boards desiring to consolidate any two or more offices or any two or more offices among several counties under the provisions of this part shall first pass a resolution stating the intent of the board or boards to consider consolidation.

(2) Nothing contained herein shall be deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices without the filing of the petition provided for in this part.

History: (1)En. 16-2501.1 by Sec. 2, Ch. 458, L. 1973; Sec. 16-2501.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 125, L. 1935; re-en. Sec. 4749.4, R.C.M. 1935; amd. Sec. 8, Ch. 100, L. 1973; Sec. 16-2504, R.C.M. 1947; R.C.M. 1947, 16-2501.1, 16-2504.

7-4-2306. Processing of petition — resolution of intent and hearing. (1) Upon the filing of a petition for consolidation, the board or boards of county commissioners shall cause the county clerk or clerks to examine the petition and the registration records of the county or counties.

(2) If after such examination the county clerk or clerks report to the board or boards of county commissioners that the petition has been signed by not less than 15% of the qualified electors of the county whose names

appear on the registration records, the board or boards shall set a date for a hearing and pass a resolution of intent to consider the consolidation. Upon passage of the resolution of intent by the board or boards, proper notice shall be given for the hearing. The date for the hearing may not be more than 20 days after the filing of the petition or the passage of the resolution of intent.

History: En. Sec. 2, Ch. 125, L. 1935; re-en. Sec. 4749.2, R.C.M. 1935; amd. Sec. 3, Ch. 458, L. 1973; R.C.M. 1947, 16-2502(part); amd. Sec. 5, Ch. 443, L. 1979.

7-4-2307. Notice of hearing. (1) The county clerk or clerks shall cause notice of the hearing required by 7-4-2306 to be published one time in the official newspaper of the county, which publication must be at least 10 days before the date set for said hearing. If there is no newspaper of general circulation printed and published in said county, then such notice must be posted by the county clerk or clerks, at least 10 days before the date set for such hearing, in three public places in the county or counties.

(2) Said notice shall either contain a copy of said petition, with the signatures omitted, or a copy of the resolution of intent passed by the board or boards of county commissioners and shall state the time and place fixed for hearing the same and that on such hearing, any taxpayer of the county may appear and be heard in support of or in opposition to said petition.

History: En. Sec. 2, Ch. 125, L. 1935; re-en. Sec. 4749.2, R.C.M. 1935; amd. Sec. 3, Ch. 458, L. 1973; R.C.M. 1947, 16-2502(part).

7-4-2308. Joint hearings. Nothing herein shall prevent the boards of county commissioners in counties affected by intercounty consolidation from holding joint hearings, provided the proper notice is given in each of the counties affected as set forth in 7-4-2306 and 7-4-2307.

History: En. 16-2502.1 by Sec. 4, Ch. 458, L. 1973; R.C.M. 1947, 16-2502.1.

7-4-2309. Conduct of hearing — decision. (1) At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any qualified elector of the county affected shall have the right to appear and be heard upon said petition, subject, however, to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing.

(2) Within 5 days after the date set for said hearing, the board or boards of county commissioners shall make such order in relation to the consolidation of said offices as they shall deem proper.

History: En. Sec. 3, Ch. 125, L. 1935; re-en. Sec. 4749.3, R.C.M. 1935; amd. Sec. 5, Ch. 458, L. 1973; R.C.M. 1947, 16-2503.

7-4-2310. Order for consolidation of offices. (1) In consolidating county offices, the board of county commissioners shall, 6 months prior to the general election held for the purpose of filling the offices to be consolidated or 6 months prior to the appointment to the offices to be consolidated, make and enter an order combining any two or more of the within-named offices.

(2) Whenever an order consolidating two or more offices is made, the order shall be entered in full on the board's minutes of proceedings.

(3) The order shall be published in a newspaper of general circulation, printed and published in the county or counties affected, for a period of 2 successive weeks following the date of the making and entering of the order.

History: Ap. p. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; Sec. 16-2406, R.C.M. 1947; Ap. p. Sec. 5, Ch. 125, L. 1935; re-en. Sec. 4749.5, R.C.M. 1935; amd. Sec. 9, Ch. 100, L. 1973; amd. Sec. 6, Ch. 458, L. 1973; Sec. 16-2505, R.C.M. 1947; R.C.M. 1947, 16-2406(part), 16-2505; amd. Sec. 6, Ch. 443, L. 1979.

7-4-2311. Implementation of consolidation order. (1) Whenever any such order is made consolidating two or more of such offices, it shall be the duty of the officers holding and occupying such offices, at the end of their terms of office, to deliver and transfer to their successor or successors all of the books, files, papers, documents, maps, plats, and records of such offices.

(2) The officer or officers receiving the same shall make and deliver proper receipts therefor and shall thereafter:

(a) be the custodian or custodians of such books, files, papers, documents, maps, plats, and records;

(b) perform all of the duties and acts imposed on such consolidated offices as required of them by law; and

(c) make and execute, with full legal force and effect, all certificates, official statements, official reports, affidavits, and other instruments required to be made by the laws of this state by either or any of the officers whose offices have been so consolidated.

(3) If the laws of this state or the rules, regulations, orders, or directions of any officer or department of the state shall require each of two offices which are consolidated to keep duplicate or similar records, books, or accounts, after such consolidation, such consolidated office shall keep but one set of such records, books, or accounts.

History: En. Sec. 6, Ch. 125, L. 1935; re-en. Sec. 4749.6, R.C.M. 1935; R.C.M. 1947, 16-2506.

7-4-2312. Salary and bond of officer following consolidation. (1) (a) When two or more offices are consolidated under a single officer, such officer shall receive as salary an amount to be determined by the board or boards of county commissioners, but which amount must not be more than 20% higher than the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidations.

(b) The board or boards shall, in June of each fourth year, adopt a resolution fixing the salary of such officer for the term beginning with the first Monday in January immediately following the adoption of such resolution.

(2) Such officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties he is required to perform by reason of such consolidation.

History: En. Sec. 7, Ch. 125, L. 1935; re-en. Sec. 4749.7, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1, Ch. 104, L. 1941; amd. Sec. 7, Ch. 458, L. 1973; R.C.M. 1947, 16-2507(part).

7-4-2313. Deputies and personnel for consolidated offices. (1) Whenever county offices are consolidated, the officer of the consolidated office may appoint as many deputies as are approved by the board or boards of county commissioners.

(2) The board or boards shall determine the number of deputies, stenographers, and clerks the officers may appoint.

History: En. Sec. 7, Ch. 125, L. 1935; re-en. Sec. 4749.7, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1, Ch. 104, L. 1941; amd. Sec. 7, Ch. 458, L. 1973; R.C.M. 1947, 16-2507(part); amd. Sec. 7, Ch. 443, L. 1979.

Part 24

Deputy Officers in General

7-4-2401. Deputy officers. (1) Every county and township officer, except justice of the peace, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his office. All compensation or salary of any deputy or assistant shall be as provided in this code.

(2) The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing and filed in the office of the county clerk.

History: (1)En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R.C.M. 1921; Cal. Pol. C. Sec. 4112; re-en. Sec. 4731, R.C.M. 1935; amd. Sec. 2, Ch. 309, L. 1973; Sec. 16-2409, R.C.M. 1947; (2)En. Sec. 4319, Pol. C. 1895; re-en. Sec. 2964, Rev. C. 1907; re-en. Sec. 4732, R.C.M. 1921; Cal. Pol. C. Sec. 4113; re-en. Sec. 4732, R.C.M. 1935; Sec. 16-2410, R.C.M. 1947; R.C.M. 1947, 16-2409, 16-2410.

7-4-2402. Authorization to exceed limitation on number of deputy officers. The board of county commissioners in each county is hereby authorized to fix and determine the number of county deputy officers and to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the board, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office.

History: Ap. p. Sec. 1, Ch. 178, L. 1907; re-en. Sec. 3123, Rev. C. 1907; re-en. Sec. 4878, R.C.M. 1921; re-en. Sec. 4878, R.C.M. 1935; Sec. 16-3704, R.C.M. 1947; Ap. p. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; re-en. Sec. 4874, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971; Sec. 25-604, R.C.M. 1947; R.C.M. 1947, 16-3704(part), 25-604(part).

7-4-2403. Official mention of principal officer includes deputies. Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes his deputies.

History: En. Sec. 4320, Pol. C. 1895; re-en. Sec. 2965, Rev. C. 1907; re-en. Sec. 4733, R.C.M. 1921; Cal. Pol. C. Sec. 4114; re-en. Sec. 4733, R.C.M. 1935; R.C.M. 1947, 16-2411.

7-4-2404. Limitation on county officer acting as deputy officer. No county officer under salary must be appointed or act as deputy of another officer of the same county except in cases where the officer so appointed agrees to act and serve as such deputy without additional compensation.

History: En. Sec. 962, Pol. C. 1895; re-en. Sec. 344, Rev. C. 1907; re-en. Sec. 412, R.C.M. 1921; Cal. Pol. C. Sec. 843; amd. Sec. 1, Ch. 21, L. 1925; re-en. Sec. 412, R.C.M. 1935; R.C.M. 1947, 59-303.

7-4-2405. Appointment of deputies in certain counties of seventh class. (1) In any county of the seventh class having less than 2,000 population, there shall not be appointed any deputy county officer or deputy designated by any county officer of such county unless the appointment of such deputy, designating the term of service and compensation thereof, shall be first authorized by the board of county commissioners of such county.

(2) The board shall not approve any compensation in payment for services of any person appointed by or acting under any elected or appointed officer of said county whose appointment, as herein provided, shall not have been authorized and approved by the board of such county.

History: (1)En. Sec. 1, Ch. 168, L. 1941; Sec. 16-3707, R.C.M. 1947; (2)En. Sec. 2, Ch. 168, L. 1941; Sec. 16-3708, R.C.M. 1947; R.C.M. 1947, 16-3707, 16-3708.

Part 25

Compensation and Official Fees

7-4-2501. Compensation of county officers. (1) The county surveyor (if not receiving a salary under 7-4-2812) and the public administrator may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed by law.

(2) All other county officers receive salaries.

History: En. Sec. 4592, Pol. C. 1895; re-en. Sec. 3113, Rev. C. 1907; re-en. Sec. 4865, R.C.M. 1921; re-en. Sec. 4865, R.C.M. 1935; R.C.M. 1947, 25-202; amd. Sec. 2, Ch. 371, L. 1979; amd. Sec. 8, Ch. 443, L. 1979; amd. Sec. 4, Ch. 518, L. 1981; amd. Sec. 24, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 518 and Ch. 575 deleted subsection (3) which provided: "The coroner is entitled to receive a salary established prior to July 1 of each year by the board of county commissioners. The salary must be in effect upon the first day of each ensuing fiscal year."

Effective Date: Section 5, Ch. 518, L. 1981, provided: "This act is effective July 1, 1981."

Composite Section: This section was amended by Ch. 371 and Ch. 443, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 443 was a Code Commissioner bill and was not intended to make substantive changes. Consequently a conflict of language in subsection (1) between Ch. 371 and Ch. 443 has been resolved in favor of the language used in Ch. 371.

Compensation Plan: Ch. 545, L. 1979, established a County Compensation Board to consider the salaries of elected county officials and present to the Legislature an ongoing salary plan.

7-4-2502. Payment of salaries of county officials and assistants. (1) Except as provided in subsection (2), the salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salary of the county attorney is payable monthly, with one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor.

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the state auditor, who shall thereafter draw warrants for such salary in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salary due on the basis of the notification.

(3) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to fix the compensation of all county

officers not otherwise fixed by law and to provide for the payment of the same.

History: (1)(a), (2)En. Sec. 4595, Pol. C. 1895; re-en. Sec. 3117, Rev. C. 1907; re-en. Sec. 4868, R.C.M. 1921; amd. Sec. 4, Ch. 141, L. 1925; re-en. Sec. 4868, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1945; Sec. 25-601, R.C.M. 1947; (1)(b)En. Sec. 4603, Pol. C. 1895; re-en. Sec. 3136, Rev. C. 1907; re-en. Sec. 4872, R.C.M. 1921; re-en. Sec. 4872, R.C.M. 1935; Sec. 25-602, R.C.M. 1947; (3)En. Subd. 18, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.17, R.C.M. 1935; Sec. 16-1020, R.C.M. 1947; R.C.M. 1947, 16-1020, 25-601, 25-602(part); amd. Sec. 1, Ch. 109, L. 1979; amd. Sec. 9, Ch. 443, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 109 and Ch. 443, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 109 provided for twice monthly and biweekly paychecks in subsection (1)(a) and in former subsection (1)(b). Ch. 443, a Code Commissioner bill, deleted subsection (1)(b) referring to payment from the contingency fund as inconsistent with subsection (1)(a) referring to payment from the general fund. The composite deleted subsection (1)(b) to avoid the inconsistency. The intent of Ch. 109 is preserved in subsection (1).

7-4-2503. Salary schedule for certain county officers. (1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, part-time county attorney, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized, for the fiscal year beginning July 1, 1981, is computed by adding the annual base salary of:

(a) $14,000 for the counties of the first through fifth class to the population increment of $10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1980 federal decennial census; or

(b) $12,000 for counties of the sixth and seventh class to the population increment of $20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

(2) (a) The county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year.

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(c) In counties with a population less than 30,000, the county attorney who is a part-time official shall receive, in addition to the salary based upon subsection (1), the sum of $1,200 per year. In each county with a population in excess of 30,000, the county attorney shall be a full-time official under 7-4-2704, and his salary for the fiscal year beginning July 1, 1981, shall be $36,500.

(d) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1981, shall be $36,500. Beginning on July 1, 1982, and on July 1 of each succeeding year, each county attorney shall be entitled to an increase in salary calculated by adding to his annual salary on July 1, 1981, an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years.

(e) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics shall be the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year shall be based on the last calendar year's annual estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify.

History: Ap. p. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 195, L. 1961; amd. Sec. 1, Ch. 216, L. 1965; amd. Sec. 1, Ch. 231, L. 1967; amd. Sec. 1, Ch. 284, L. 1969; amd. Sec. 1, Ch. 265, L. 1971; amd. Sec. 10, Ch. 391, L. 1973; amd. Sec. 1, Ch. 474, L. 1973; amd. Sec. 1, Ch. 331, L. 1974; amd. Sec. 3, Ch. 102, L. 1975; amd. Sec. 1, Ch. 195, L. 1975; amd. Sec. 1, Ch. 493, L. 1977; Sec. 25-605, R.C.M. 1947; Ap. p. Sec. 4, Ch. 150, L. 1945; amd. Sec. 1, Ch. 91, L. 1947; amd. Sec. 1, Ch. 177, L. 1949; Sec. 25-608, R.C.M. 1947; R.C.M. 1947, 25-605, 25-608; amd. Sec. 1, Ch. 459, L. 1979; amd. Sec. 4, Ch. 669, L. 1979; amd. Sec. 1, Ch. 518, L. 1981.

Compiler's Comments

1981 Amendment: Rewrote entire section to substitute present language for specific dollar amounts based on population. For former text see sec. 1, ch. 459, L. 1979, and sec. 4, ch. 669, L. 1979. For language of former composite section, see 7-4-2503, MCA 1979.

Effective Date: Section 5, Ch. 518, L. 1981, provided: "This act is effective July 1, 1981."

7-4-2504. Salaries to be fixed by resolution — cost-of-living increments. (1) The county governing body shall by resolution, on or before July 1, 1982, and on or before July 1 of each year thereafter adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and the clerk of the district court; the county auditor (if there is one); and the county surveyor (if he receives a salary) for cost-of-living increase by adding to the annual salary computed under 7-4-2503 an increment calculated by applying to the annual salary established by 7-4-2503(1) plus previous cost-of-living increments, 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years.

(2) If the application of 7-4-2503 does not qualify a county official for a salary increase of at least 7% on July 1, 1981, his salary on that date shall be increased by an amount sufficient to provide him total salary equal to 7% more than during the previous year.

(3) The county governing body shall by resolution, prior to July 1 of each year, establish the salary of the coroner. The salary must be in effect upon the first day of each ensuing fiscal year.

History: En. Sec. 1, Ch. 306, L. 1973; R.C.M. 1947, 25-609.1; amd. Sec. 10, Ch. 443, L. 1979; amd. Sec. 2, Ch. 459, L. 1979; amd. Sec. 3, Ch. 518, L. 1981; amd. Sec. 25, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 518 rewrote entire section to provide for cost-of-living increments. For former text see sec. 10, Ch. 443, L. 1979, and sec. 2, Ch. 459, L. 1979. For language of composite section, see 7-4-2504, MCA 1979.

Chapter 575 deleted "(if he receives a salary)" after "county coroner" in two places. Chapter 518 also deleted this language.

Effective Date: Section 5, Ch. 518, L. 1981, provided: "This act is effective July 1, 1981."

7-4-2505. Amount of compensation for deputies and assistants. (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant of the following officers:

(a) clerk and recorder;
(b) clerk of the district court;
(c) treasurer;
(d) assessor;
(e) county attorney;
(f) auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1) may not be more than 90% of the salary of the officer under whom such deputy or assistant is serving.

(b) Where any deputy or assistant is employed for a period of less than 1 year, the compensation of such deputy or assistant shall be for the time so employed, provided the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants except as provided herein.

(c) Deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.

History: Ap. p. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; re-en. Sec. 4874, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971; Sec. 25-604, R.C.M. 1947; Ap. p. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; Sec. 84-402, R.C.M. 1947; R.C.M. 1947, 25-604(part), 84-402(part); amd. Sec. 1, Ch. 603, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "Subject to" for "Except as provided in", and deleted "sheriff" from the list of officers; in (2)(a), substituted "The ... may not be" for "Except as provided in subsection (2)(b), the salary of no deputy or assistant shall be"; and deleted former subsection (2)(b), which read:

"In fixing the compensation allowed the undersheriff, the board must fix the same at 95% of the salary of the officers under whom such undersheriff is serving. In fixing the compensation allowed the deputy sheriffs, the board must fix the same at 90% of the salary of the officer under whom such deputy sheriff is serving, except in counties of the first, second, or third class, in which the board must fix the same at not less than 75% or more than 90% of the salary of the officer under whom such deputy sheriff is serving."

7-4-2506. Affidavit required for deputy to receive salary. The board must not order the payment of the compensation of any deputy until he has signed and filed with the county clerk the following affidavit:

State of Montana
County of ....

I do swear that I have rendered services as deputy .... for the month of ...., 19.., and that I am entitled to receive the full sum of my compensation for the same for my own use and benefit and that I have not paid, deposited, or assigned or contracted to pay, deposit, or assign any part of such compensation for the use of any other person or in any way, directly or indirectly, paid or given or contracted to pay or give any reward or compensation for my appointment to office or the emoluments thereof to my principal or to any other person.

....

Subscribed and sworn to before me this .... day of ...., 19...

....

History: En. Sec. 4610, Pol. C. 1895; re-en. Sec. 3143, Rev. C. 1907; re-en. Sec. 4891, R.C.M. 1921; re-en. Sec. 4891, R.C.M. 1935; R.C.M. 1947, 25-207.

7-4-2507. Deputy sheriff and undersheriff provisions — construction. If there is a conflict between 7-4-2508 through 7-4-2510 and any other law, 7-4-2508 through 7-4-2510 govern with respect to undersheriffs and deputy sheriffs.

History: En. Sec. 7, Ch. 603, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 603, L. 1981 (HB 558) read: "An act to revise the compensation provisions relating to deputy sheriffs and undersheriffs; amending sections 7-4-2505 and 39-3-406, MCA."

7-4-2508. Compensation of undersheriff and deputy sheriff. (1) The sheriff shall fix the compensation of the undersheriff at 95% of the salary of that sheriff.

(2) (a) The sheriff shall fix the compensation of the deputy sheriff based upon a percentage of the salary of that sheriff according to the following schedule:

In counties with population of:

Below 15,000	85% to 90%
15,000 to 29,999	76% to 90%
30,000 to 74,999	74% to 90%
75,000 and over	72% to 90%

(b) The sheriff shall adjust the compensation of the deputy sheriff within the range prescribed in subsection (a) according to a rank structure in the department.

(3) For purposes of this section, the term "compensation" means the base rate of pay and does not mean longevity payments or payments for hours worked overtime.

History: En. Sec. 2, Ch. 603, L. 1981.

7-4-2509. Sheriff's department — work period in lieu of workweek — overtime compensation. (1) (a) A sheriff's department may establish a work period other than the workweek provided in 39-3-405 or 7-32-2111 for determining when an employee may be paid overtime.

(b) The aggregate of all work periods in a year, when expressed in hours, may not exceed 2,080 hours.

(2) The board of county commissioners may by resolution establish that any undersheriff or deputy sheriff who works in excess of his regularly scheduled work period will be compensated for the hours worked in excess of the work period at a rate to be determined by that board of county commissioners.

History: En. Secs. 3, 4, Ch. 603, L. 1981.

7-4-2510. Sheriff's department — longevity payments. Beginning on the date of his first anniversary of employment with the department and adjusted annually, a deputy sheriff or undersheriff is entitled to receive a longevity payment amounting to 1% of the minimum base annual salary for each year of service with the department. This payment shall be made in equal monthly installments.

History: En. Sec. 5, Ch. 603, L. 1981.

7-4-2511. Collection and disposal of fees. (1) Each salaried county officer must charge and collect for the use of his county and pay into the county treasury on the first Monday in each month all fees now or hereafter allowed by law, paid or chargeable in all cases, except as provided in 25-10-403. Nothing in this subsection applies to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in his custody.

(2) No salaried county officer may receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county.

History: (1)En. Sec. 4606, Pol. C. 1895; re-en. Sec. 3139, Rev. C. 1907; re-en. Sec. 4887, R.C.M. 1921; re-en. Sec. 4887, R.C.M. 1935; Sec. 25-203, R.C.M. 1947; (2)En. Sec. 4591, Pol. C. 1895; re-en. Sec. 3112, Rev. C. 1907; re-en. Sec. 4864, R.C.M. 1921; amd. Sec. 3, Ch. 141, L. 1925; re-en. Sec. 4864, R.C.M. 1935; Sec. 25-201, R.C.M. 1947; R.C.M. 1947, 25-201, 25-203; amd. Sec. 11, Ch. 443, L. 1979.

7-4-2512. Statement and affidavit of fees collected. (1) The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer on the first Monday of the following month and must be accompanied by a statement and copy of the fee book for the preceding month, duly verified by the officer making the payment.

(2) The affidavit must be in the following form:

State of Montana
County of ....

I, ..., of the county of ...., do swear that the fee book in my office contains a true statement in detail of all fees and compensations of every kind and nature for official services rendered by me, paid or chargeable, or by my deputies or assistants for the month of ...., 19.., and that this fee book shows the full amount received or chargeable in said month and since my last monthly payment; and neither myself nor, to my knowledge or belief, any of my deputies or assistants have rendered any official service, except for the county or state, which is not fully set out in this fee book; and that the foregoing statement is a full, true, and correct copy thereof.

.... (Signature)

Subscribed and sworn to before me this ... day of ...., 19...
Seal ...... (Person authorized to take oaths)
.... (Title or notarial information)

History: En. Sec. 4607, Pol. C. 1895; re-en. Sec. 3140, Rev. C. 1907; re-en. Sec. 4888, R.C.M. 1921; re-en. Sec. 4888, R.C.M. 1935; R.C.M. 1947, 25-204; amd. Sec. 12, Ch. 443, L. 1979.

7-4-2513. Filing of statements and affidavits. The treasurer must file and preserve in his office said statements and affidavits and must issue to the officer one original and one duplicate receipt therefor. The officer receiving said receipts must preserve one in his office and file the duplicate with the county clerk, whereupon the clerk must charge the treasurer with the amount shown by the receipt.

History: En. Sec. 4608, Pol. C. 1895; re-en. Sec. 3141, Rev. C. 1907; re-en. Sec. 4889, R.C.M. 1921; re-en. Sec. 4889, R.C.M. 1935; R.C.M. 1947, 25-205.

7-4-2514. Filing required to receive salary. The board of county commissioners must not order the payment of the salary of any such officer until he has filed the duplicate receipt with the county clerk, properly signed by the treasurer, showing that he has made the statement and settlement for that month, required in this part, and filed the report prescribed in 7-6-2213.

History: En. Sec. 4609, Pol. C. 1895; re-en. Sec. 3142, Rev. C. 1907; re-en. Sec. 4890, R.C.M. 1921; re-en. Sec. 4890, R.C.M. 1935; R.C.M 1947, 25-206.

7-4-2515. Fees to be paid in advance. (1) The officers mentioned in this chapter must not in any case perform any official services unless the fees prescribed for such services are paid in advance. On such payment, the officers must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

(2) The county clerk is not bound to record any instrument, file any paper or notice, furnish any copies, or render any service connected with his office until the fee for the same as prescribed by law is, if demanded, paid or tendered.

(3) When any publication is required by law to be made by an officer of any suit, process, notice, order, or other paper, the costs of the same must be first tendered by the party, if demanded, for whom such order of publication was granted before the officer is compelled to make such publication.

History: (1)En. Sec. 4611, Pol. C. 1895; re-en. Sec. 3144, Rev. C. 1907; re-en. Sec. 4892, R.C.M. 1921; re-en. Sec. 4892, R.C.M. 1935; Sec. 25-208, R.C.M. 1947; (2)En. Sec. 4422, Pol. C. 1895; re-en. Sec. 3043, Rev. C. 1907; re-en. Sec. 4809, R.C.M. 1921; Cal. Pol. C. Sec. 4245; re-en. Sec. 4809, R.C.M. 1935; Sec. 16-2915, R.C.M. 1947; (3)En. Sec. 4617, Pol. C. 1895; re-en. Sec. 3150, Rev. C. 1907; re-en. Sec. 4898, R.C.M. 1921; re-en. Sec. 4898, R.C.M. 1935; Sec. 25-214, R.C.M. 1947; R.C.M. 1947, 16-2915, 25-208, 25-214.

7-4-2516. Fees not required in certain cases. No fees must be charged the state, any county, or any subdivision thereof, any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees.

History: En. Sec. 4612, Pol. C. 1895; re-en. Sec. 3145, Rev. C. 1907; re-en. Sec. 4893, R.C.M. 1921; re-en. Sec. 4893, R.C.M. 1935; R.C.M. 1947, 25-209.

7-4-2517. Itemized receipt for fees. Every officer, upon receiving any fees for official duty or service, may be required by the person paying the same to make out in writing and deliver to such person a particular account of such fees, specifying for what they accrued, respectively, and must receipt the same. If he refuses or neglects to do so when required, he is liable to the party paying the same in treble the amount so paid.

History: En. Sec. 4614, Pol. C. 1895; re-en. Sec. 3147, Rev. C. 1907; re-en. Sec. 4895, R.C.M. 1921; re-en. Sec. 4895, R.C.M. 1935; R.C.M. 1947, 25-211.

7-4-2518. Statement of fees to be posted. (1) It is the duty of each officer entitled to collect fees to keep posted in his office a plain and legible statement of the fees allowed by law.

(2) A failure to do so subjects the officer to a fine of $100 and costs, to be recovered by the county attorney in the name of the state.

History: En. Sec. 4615, Pol. C. 1895; re-en. Sec. 3148, Rev. C. 1907; re-en. Sec. 4896, R.C.M. 1921; re-en. Sec. 4896, R.C.M. 1935; R.C.M. 1947, 25-212.

7-4-2519. Prohibition upon receiving other fees. The officers named above may receive no other fees for any services performed by them in any action or proceeding or for the performance of any service for which fees are allowed, and the party demanding or receiving any fees not herein allowed is liable to refund the same to the party aggrieved, with treble the amount as damages, in addition to the cost of suit.

History: En. Sec. 4616, Pol. C. 1895; re-en. Sec. 3149, Rev. C. 1907; re-en. Sec. 4897, R.C.M. 1921; re-en. Sec. 4897, R.C.M. 1935; R.C.M. 1947, 25-213; amd. Sec. 13, Ch. 443, L. 1979.

7-4-2520. Misconduct concerning official fees to result in vacancy of office. Upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees or upon proof that the officer collected fees and failed to account for the same, the board of county commissioners must declare his office vacant and appoint his successor.

History: En. Sec. 4629, Pol. C. 1895; re-en. Sec. 3162, Rev. C. 1907; re-en. Sec. 4911, R.C.M. 1921; re-en. Sec. 4911, R.C.M. 1935; R.C.M. 1947, 25-230.

Part 26

Office of County Clerk

7-4-2601. Limitation on number of deputy county clerks. The whole number of deputies allowed the county clerk must not exceed:

(1) six in counties of the first and second classes;
(2) three in counties of the third class;
(3) two in counties of the fourth and fifth classes;
(4) one in counties of the sixth and seventh classes.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part).

7-4-2602. Designation of chief deputy by county clerk. The county clerk in counties of the first class may designate one of his deputy clerks as chief deputy clerk.

History: En. Sec. 1, Ch. 53, L. 1909; re-en. Sec. 4876, R.C.M. 1921; re-en. Sec. 4876, R.C.M. 1935; R.C.M. 1947, 16-3702.

7-4-2603 through 7-4-2610 reserved.

7-4-2611. Role and duties of county clerk. (1) The county clerk of any county is also clerk of the county commissioners and ex officio recorder. Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or recorder, shall be performed by the county clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and certified to by him as clerk of the county commissioners or as recorder.

(2) The county clerk must:

(a) take charge of and safely keep or dispose of according to law all books, papers, maps, and records which may be filed or deposited in his office;

(b) record all the proceedings of the board;

(c) make full entries of all its resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

(d) record the vote of each member on any question upon which there is a division or at the request of any member present;

(e) sign all orders made and warrants issued by order of the board for the payment of money and certify the same to the county treasurer;

(f) record the reports of the county treasurer of the receipts and disbursements of the county;

(g) preserve and file all accounts acted upon by the board;

(h) preserve and file all petitions and applications for franchises and record the action of the board thereon;

(i) record all orders levying taxes;

(j) designate upon every account allowed by the board the amount allowed and deliver to any person who may demand it a certified copy of any record in his office or any account on file therein;

(k) as often as a new township is organized or the boundaries of any township are altered, immediately make out and transmit to the secretary of state a certified statement of the names and boundaries and the boundaries of any township altered;

(l) keep such other records and books and perform such other duties as are prescribed by law or by rule or order of the board.

(3) A county clerk and recorder shall file, code, and cross-index all reports and statements filed as prescribed by the commissioner of political practices.

(4) A county clerk and recorder shall make statements and other information filed under the provisions of Title 13, chapters 35, 36, and 37, in his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost.

History: (1)En. Sec. 4671, Civ. C. 1895; re-en. Sec. 6233, Rev. C. 1907; re-en. Sec. 4813a, R.C.M. 1921; re-en. Sec. 4813.1, R.C.M. 1935; Sec. 16-2920, R.C.M. 1947; (2)Ap. p. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; Sec. 16-2917, R.C.M. 1947; Ap. p. Sec. 4410, Pol. C. 1895; re-en. Sec. 3031, Rev. C. 1907; re-en. Sec. 4795, R.C.M. 1921; Cal. Pol. C. Sec. 4234; re-en. Sec. 4795, R.C.M. 1935; Sec. 16-2901, R.C.M. 1947; Ap. p. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Sec. 366, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Secs. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907; re-en. Sec. 4460, R.C.M. 1921; Cal. Pol. C. Sec. 4030; re-en. Sec. 4460, R.C.M. 1935; Sec. 16-908, R.C.M. 1947; Ap. p. Sec. 4426, Pol. C. 1895; re-en. Sec. 3047, Rev. C. 1907; re-en. Sec. 4813, R.C.M. 1921; Cal. Pol. C. Sec. 4205; re-en. Sec. 4813, R.C.M. 1935; Sec. 16-2919, R.C.M. 1947; (3), (4)En. 23-4790 by Sec. 15, Ch. 480, L. 1975; Sec. 23-4790, R.C.M. 1947; R.C.M. 1947, 16-908, 16-2901(part), 16-2917(1), 16-2919, 16-2920, 23-4790; amd. Sec. 303, Ch. 571, L. 1979; amd. Sec. 26, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "under the provisions of Title 13, chapters 35, 36, and 37, in" for "with" in (4).

1980 Name Change: Section 19, Initiative No. 85, 1980, provided: "The office of the commissioner of campaign finances and practices, created by 13-37-102, shall be known as the office of the commissioner of political practices." The code commissioner has changed the name in this section accordingly. See 1-11-101(2)(g).

7-4-2612. Books for recording documents. The county clerk, as ex officio recorder, must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the board of county commissioners.

History: En. Sec. 4410, Pol. C. 1895; re-en. Sec. 3031, Rev. C. 1907; re-en. Sec. 4795, R.C.M. 1921; Cal. Pol. C. Sec. 4234; re-en. Sec. 4795, R.C.M. 1935; R.C.M. 1947, 16-2901(part).

7-4-2613. Documents subject to recording. The county clerk must, upon payment of his fees for the same, record, photograph, or correctly copy, separately, in large and well-bound or to be bound separate books, either in a fair hand or by printing, typewriting, or photographic process or by the use of prepared blank forms:

(1) deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest; however, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;

(3) a document on a form provided by the department of revenue certifying that the holder of a nonprobate interest in real property is deceased and that his interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest not requiring probate. The document may be on the form used by the department of revenue for responding to the application for determination of inheritance or estate tax. It shall contain:

(a) a statement that the holder of the nonprobate interest has died and that his interest in the property is terminated;

(b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due, has been paid or that no inheritance or estate tax was due;

(c) a description of the property;

(4) certificates of births and deaths;

(5) wills devising real estate admitted to probate;

(6) official bonds;

(7) transcripts of judgments which by law are made liens upon real estate;

(8) instruments describing or relating to the individual property of married persons;

(9) all orders and decrees made by the district court in probate matters affecting real estate and which are required to be recorded;

(10) notice of preemption claims;

(11) notice and declaration of water rights;

(12) assignments for the benefit of creditors;
(13) affidavits of annual work done on mining claims;
(14) notices of mining locations and declaratory statements;
(15) estrays and lost property;
(16) a book containing appraisement of state lands;
(17) such other writings as are required or permitted by law to be recorded.

History: Ap. p. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; Cal. Pol. C. Sec. 4235; re-en. Sec. 4796, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971; amd. Sec. 1, Ch. 199, L. 1975; amd. Sec. 19, Ch. 293, L. 1975; Sec. 16-2902, R.C.M. 1947; Ap. p. Sec. 4414, Pol. C. 1895; re-en. Sec. 3035, Rev. C. 1907; re-en. Sec. 4801, R.C.M. 1921; Cal. Pol. C. Sec. 4238; re-en. Sec. 4801, R.C.M. 1935; Sec. 16-2907, R.C.M. 1947; R.C.M. 1947, 16-2902(part), 16-2907; amd. Sec. 14, Ch. 443, L. 1979; amd. Sec. 1, Ch. 701, L. 1979; amd. Sec. 1, Ch. 377, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (3).

7-4-2614. Records of certificates of discharge from military service. It is the duty of the county clerk of any county of this state to record, without charge and in a book kept for that purpose, the certificate of discharge of an honorably discharged person, regardless of sex, who served with the United States forces.

History: En. Sec. 2, Ch. 211, L. 1921; re-en. Sec. 5654, R.C.M. 1921; re-en. Sec. 5654, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1943; Sec. 77-801, R.C.M. 1947; amd. and redes. 16-2927 by Sec. 3, Ch. 94, L. 1974; R.C.M. 1947, 16-2927.

7-4-2615. Records of water users' associations. In each county where water users' associations organized in conformity with the federal reclamation laws of the United States exist, the county commissioners are required to furnish the county recorder with books for the proper recording of stock subscriptions, contracts, articles of incorporation, and stock certificates of such associations, containing printed blank forms of the stock subscriptions, contracts, articles of incorporation, and stock certificates. The forms are to be prepared by the attorney general and used by the county recorder for the recording of all such stock subscriptions, contracts, articles of incorporation, and stock certificates.

History: En. Sec. 1, Ch. 68, L. 1909; re-en. Sec. 4467, R.C.M. 1921; re-en. Sec. 4467, R.C.M. 1935; R.C.M. 1947, 16-1101(part); amd. Sec. 15, Ch. 443, L. 1979.

7-4-2616. Map book. The county clerk must keep a well-bound book which must contain maps of towns, villages, or additions to the same within his county, together with the description, acknowledgment, or other writing thereon.

History: En. Sec. 4416, Pol. C. 1895; re-en. Sec. 3037, Rev. C. 1907; re-en. Sec. 4803, R.C.M. 1921; re-en. Sec. 4803, R.C.M. 1935; R.C.M. 1947, 16-2909.

7-4-2617. Procedure to record documents. (1) When any instrument, paper, or notice authorized by law to be recorded is deposited for record in the office of the county clerk, as ex officio recorder, and accompanied by the required fee, he must endorse upon the same the time it was received, noting the year, month, day, hour, and minute of its reception, and the reception of the instrument must be immediately entered in the county clerk and recorder's reception book.

(2) The county clerk must record said instrument without delay, together with the acknowledgment, proofs, and certificates written upon or annexed to the same and with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record and must note at the foot of the record the exact time of its reception.

(3) The county clerk must also endorse upon each instrument, paper, or notice the time when and the book and pages in which it is recorded and must thereafter deliver it, upon request, to the party leaving the same for record or to his order.

History: (1), (2)En. Sec. 4418, Pol. C. 1895; re-en. Sec. 3039, Rev. C. 1907; re-en. Sec. 4805, R.C.M. 1921; Cal. Pol. C. Sec. 4241; amd. Sec. 1, Ch. 2, L. 1929; amd. Sec. 1, Ch. 27, L. 1931; re-en. Sec. 4805, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1949; Sec. 16-2911, R.C.M. 1947; (3)En. Sec. 4419, Pol. C. 1895; re-en. Sec. 3040, Rev. C. 1907; re-en. Sec. 4806, R.C.M. 1921; Cal. Pol. C. Sec. 4242; re-en. Sec. 4806, R.C.M. 1935; Sec. 16-2912, R.C.M. 1947; R.C.M. 1947, 16-2911(part), 16-2912.

7-4-2618. Addresses required to record certain documents. The county clerk shall not receive for recording any deed, mortgage, or assignment of mortgage unless the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be, is contained therein. This requirement shall not affect the validity of the record of any instrument which has been or may be recorded.

History: En. Sec. 4418, Pol. C. 1895; re-en. Sec. 3039, Rev. C. 1907; re-en. Sec. 4805, R.C.M. 1921; Cal. Pol. C. Sec. 4241; amd. Sec. 1, Ch. 2, L. 1929; amd. Sec. 1, Ch. 27, L. 1931; re-en. Sec. 4805, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1949; R.C.M. 1947, 16-2911(part).

7-4-2619. Indexes to recorded documents. Every county clerk, as ex officio recorder, must keep:

(1) an index of deeds, grants, and transfers and contracts to sell or convey real estate and notices of buyer's interest in real property labeled "Grantors", with each page divided into four columns headed, respectively: "Names of grantors", "Names of grantees", "Date of deeds, grants, transfers, contracts, or notices", and "Where recorded";

(2) an index of deeds and notices of buyer's interest in real property labeled "Grantees", with each page divided into four columns headed, respectively: "Names of grantees", "Names of grantors", "Date of deeds, grants, transfers, contracts, or notices", and "Where recorded";

(3) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns headed, respectively: "Names of mortgagors", "Names of mortgagees", "Dates of mortgages", "Where recorded", "When filed", and "When canceled";

(4) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns headed, respectively: "Names of mortgagees", "Names of mortgagors", "Date of mortgage", "Where recorded", "When filed", and "When canceled";

(5) an index of mortgages labeled "Releases of mortgages of real property—Mortgagees", with each page divided into six columns headed, respectively: "Parties whose mortgages are released", "Parties releasing", "Date of release", "Where recorded", "Dates of mortgages released", and "Where mortgages released are recorded";

(6) an index of powers of attorney labeled "Powers of attorney", with each page divided into five columns headed, respectively: "Names of parties

executing powers", "To whom powers are executed", "Date of powers", "Date of recording", and "To whom powers are executed";

(7) an index of leases labeled "Leases", with each page divided into four columns headed, respectively: "Names of lessors", "Names of lessees", "Date of leases", and "When and where recorded";

(8) an index of leases labeled "Lessees", with each page divided into four columns headed, respectively: "Names of lessees", "Names of lessors", "Date of leases", and "When and where recorded";

(9) an index of marriage certificates labeled "Marriage certificate—Men", with each page divided into six columns headed, respectively: "Men married", "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(10) an index of marriage certificates labeled "Marriage certificates—Women", with each page divided into six columns headed, respectively: "Women married" (and under this head placing the family names of the women), "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(11) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignors", with each page divided into five columns headed, respectively: "Assignors", "Assignees", "Instruments assigned", "Date of assignment", and "When and where recorded";

(12) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignees", with each page divided into five columns headed, respectively: "Assignees", "Assignors", "Instruments", "Date of assignment", and "When and where recorded";

(13) an index of wills labeled "Wills", with each page divided into four columns headed, respectively: "Names of testators", "Date of will", "Date of probate", and "When and where recorded";

(14) an index of official bonds labeled "Official bonds", with each page divided into five columns headed, respectively: "Names of officers", "Names of offices", "Date of bond", "Amount of bond", and "When and where recorded";

(15) an index of notices of mechanics' liens labeled "Mechanics' liens", with each page divided into three columns headed, respectively: "Parties claiming liens", "Against whom claimed", and "Notices, when filed";

(16) an index to transcripts of judgments labeled "Transcripts of judgments", with each page divided into seven columns headed, respectively: "Judgment debtors", "Judgment creditors", "Amount of judgment", "Where recovered", "When recovered", "When transcript filed", and "When judgment satisfied";

(17) an index of attachments labeled "Attachments", with each page divided into six columns headed, respectively: "Parties against whom attachments are issued", "Parties issuing attachments", "Notices of attachments", "When filed", and "When attachments discharged";

(18) an index of notices of the pendency of actions labeled "Notices of actions", with each page divided into three columns headed, respectively: "Parties to actions", "Notices, when recorded", and "When filed";

(19) an index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings labeled "Certificates of sale",

with each page divided into four columns headed, respectively: "Plaintiff", "Defendant", "Purchaser at sale", and "Date of sale";

(20) an index of the individual property of married persons labeled "Individual property of married persons", with each page divided into five columns headed, respectively: "Names of married persons", "Names of their spouses", "Nature of instruments recorded", "When recorded", and "Where recorded";

(21) an index to affidavits for annual work done on mining claims labeled "Annual work on mining claims", with each page divided into four columns headed, respectively: "Name of the affiant", "Name of the claim", "Where situated", and "Year when the work was done";

(22) an index of mining claims and declaratory statements labeled "Notices of location of mining claims and declaratory statements", with each page divided into four columns headed, respectively: "Locators", "Name of claim", "Notice, when filed", and "Where recorded";

(23) an index to the register of births and deaths;

(24) an index to notices and declarations of water rights;

(25) an index to the "estray and lost property book";

(26) an index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory, when filed;

(27) an index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions;

(28) an index to filed subdivision plats, containing number of lots, number of acres, filing date, and the location of the quarter section of each subdivision;

(29) an index to the book of maps and plats, which must contain the name of the proprietor of the town, village, or addition platted and a general description of the same;

(30) a miscellaneous index, in which must be indexed papers not hereinbefore stated.

History: (1) thru (28), (30)En. Sec. 4412, Pol. C. 1895; re-en. Sec. 3033, Rev. C. 1907; re-en. Sec. 4799, R.C.M. 1921; Cal. Pol. C. Sec. 4236; re-en. Sec. 4799, R.C.M. 1935; amd. Sec. 11-111, Ch. 264, L. 1963; amd. Sec. 2, Ch. 199, L. 1975; amd. Sec. 20, Ch. 293, L. 1975; (29)En. Sec. 4413, Pol. C. 1895; re-en. Sec. 3034, Rev. C. 1907; re-en. Sec. 4800, R.C.M. 1921; re-en. Sec. 4800, R.C.M. 1935; Sec. 16-2906, R.C.M. 1947; R.C.M. 1947, 16-2905, 16-2906; amd. Sec. 16, Ch. 443, L. 1979; amd. Sec. 2, Ch. 701, L. 1979.

7-4-2620. Details relating to indexes. (1) The county clerk may keep in the same volume any two or more of the indexes mentioned in 7-4-2619, but the several indexes must be kept distinct from each other, with the volumes distinctly marked on the outside in such way as to show all the indexes kept therein.

(2) The names of the parties in the first column of the several indexes must be arranged in alphabetical order. When a conveyance is executed by a sheriff, the name of the sheriff and the party charged in the execution must both be inserted in the index. When an instrument is recorded to which an executor, administrator, or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate or party for whom the trust is held, must be inserted in the index.

History: En. Sec. 4417, Pol. C. 1895; re-en. Sec. 3038, Rev. C. 1907; re-en. Sec. 4804, R.C.M. 1921; Cal. Pol. C. Sec. 4240; re-en. Sec. 4804, R.C.M. 1935; R.C.M. 1947, 16-2910.

7-4-2621. Search of records. Upon the application of any person and upon the payment or tender of the fees therefor, the county clerk may:

(1) make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office; and

(2) furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices; the dates thereof; the year, month, day, hour, and minute they were recorded or filed; the extent to which they purport to affect the property to which they relate; and the book and pages where they are recorded.

History: En. Sec. 4420, Pol. C. 1895; re-en. Sec. 3041, Rev. C. 1907; re-en. Sec. 4807, R.C.M. 1921; Cal. Pol. C. Sec. 4243; re-en. Sec. 4807, R.C.M. 1935; R.C.M. 1947, 16-2913.

7-4-2622. Availability of records. All books or records, maps, charts, surveys, and other papers on file in the county clerk's office must be open during office hours for the inspection of any person who may desire to inspect them and may be inspected without charge. The county clerk must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

History: En. Sec. 4423, Pol. C. 1895; re-en. Sec. 3044, Rev. C. 1907; re-en. Sec. 4810, R.C.M. 1921; Cal. Pol. C. Sec. 4246; re-en. Sec. 4810, R.C.M. 1935; R.C.M. 1947, 16-2916.

7-4-2623. Liability of clerk relating to duties as recorder. A county clerk is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby and is punishable as provided in this code if the county clerk, as ex officio recorder to whom an instrument, proved or acknowledged according to law, or any paper or notice which may be recorded by law is delivered for record:

(1) neglects or refuses to record such instrument, paper, or notice within reasonable time after receiving the same;

(2) records any instruments, papers, or notices untruly or in any other manner than as hereinbefore directed;

(3) neglects or refuses to keep in his office such indexes as are required by this part or to make the proper entries therein;

(4) neglects or refuses to make the searches and to give the certificates required by this part or if such searches or certificates are incomplete or defective when such incompleteness or defect is due to his direct responsibility particularly affecting the property in respect to which it is requested;

(5) alters, changes, or obliterates any records deposited in his office or inserts any new matter therein.

History: En. Sec. 4421, Pol. C. 1895; re-en. Sec. 3042, Rev. C. 1907; re-en. Sec. 4808, R.C.M. 1921; Cal. Pol. C. Sec. 4244; re-en. Sec. 4808, R.C.M. 1935; R.C.M. 1947, 16-2914.

7-4-2624 through 7-4-2630 reserved.

7-4-2631. Fees of county clerk. (1) The county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $2;

(d) for filing and indexing each certificate of fictitious name, $3;

(e) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(f) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(g) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $1;

(h) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(i) for administering an oath with certificate and seal, no charge;

(j) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(k) for documents requiring multiple indexing (including but not limited to mortgages; releases; deeds; certificates of location; affidavits of annual labor on mining claims; assignments of leases; assignments of mortgages; oil, gas, and mineral leases; releases of oil, gas, and mineral leases; assignments of overriding royalties; executions; lis pendens; attachments; and all liens), 50 cents per index in excess of the first index contained in a single document;

(l) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed in those sections;

(m) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service;

(o) for each copy of a birth certificate or a death certificate, $2.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. These fees must be paid by a state agency on a monthly basis.

History: **Ap.p. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; Sec. 25-231, R.C.M. 1947; Ap.p. Sec. 1, Ch. 68, L. 1909; re-en. Sec. 4467, R.C.M. 1921; re-en. Sec. 4467, R.C.M. 1935; Sec. 16-1101, R.C.M. 1947; Ap.p. Sec. 8, Ch. 198, L. 1961; Sec. 70-415, R.C.M. 1947; R.C.M. 1947, 16-1101(part), 25-231(part), 70-415(part); amd. Sec. 1, Ch. 487, L. 1979; amd. Sec. 1, Ch. 414, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted outdated provisions relating to recording charges for written instruments and real estate mortgages based on folios; deleted charge for recording notice of appropriating of water and increased charge for recording location of mining claims from $4 to $6 in subsection (1)(a); increased charge for recording annual labor affidavit from $2 to $3 in subsection (1)(b)(i); increased charge for filing writs or other instruments from $1 to $2 in subsection (1)(c); deleted charge for filing certificate of incorporation and annual statements and inserted charge for filing certificate of fictitious name in subsection (1)(d); inserted base fee of $5 for filing of subdivision and townsite plats, increased fee for lots in excess of 100 from 10 cents to 25 cents, and deleted fee for recording field notes in subsection (1)(e); inserted subsection (1)(f) relating to filing certificates of surveys; changed subsection (1)(g)(i) from charge per folio to charge per page; increased charge for searching index from 30 cents to 50 cents in subsection (1)(h); deleted charge for each entry of discharge of mortgage in (1)(j); deleted charge for recording instrument under 70-21-207 and instrument pertaining to land alloted to an Indian in former (1)(m); inserted subsection (1)(k) relating to documents requiring multiple indexing; increased charge for recording each stock subscription 50 cents to $3 in subsection (1)(m); deleted charging relating to television district; deleted "7-4-2633" from subsection (1)(n); changed "may" to "must" in last sentence of subsection (2).

7-4-2632. Fee when recording done by mechanical means. Where recording is done by photographic or similar process, the county clerk and recorder shall charge $2 for each page or fraction of a page of the instrument for recording.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(8); amd. Sec. 2, Ch. 414, L. 1981.

Compiler's Comments

1981 Amendment: Changed "filing and indexing" to "recording" at the end of the section.

7-4-2633. Repealed. Sec. 3, Ch. 414, L. 1981.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(part).

7-4-2634. Fees to be noted on recorded documents. On each instrument delivered to him for recording, the county clerk shall endorse on it all charges made for each service, and the endorsement shall be recorded as a part of the instrument in his office in order that the department of administration may verify the charges and may see that they have been properly entered on the fee book or reception record in the county clerk's office.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(17); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs".

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-4-2634 . . . are transferred to the department of administration."

Part 27

Office of County Attorney

7-4-2701. Qualifications for county attorney in certain counties. No person is eligible for the position of county attorney in counties which have a population in excess of 30,000 unless he is a citizen of the

United States who has resided in the state 2 years immediately before taking office and has been admitted to the practice of law for at least 5 years prior to the date of election or appointment.

History: En. 16-3107 by Sec. 2, Ch. 102; L. 1975; R.C.M. 1947, 16-3107.

7-4-2702. Procedure to fill vacancy in office of county attorney. (1) Whenever a vacancy in the office of county attorney shall arise in any county and there is no licensed attorney residing in said county who is eligible to be appointed to fill said vacancy, the board of county commissioners is authorized and has the power to employ special counsel from without the county, who shall be designated and officially known as the "acting county attorney" and who during said employment shall be vested with all the powers and shall perform all the duties of the county attorney, including the filing of all complaints, informations, and/or other proceedings for and in which the county or state may be a party and the prosecution and defense of the same to the same extent and with the same force and effect as if he were the regular qualified county attorney. Said attorney shall be paid a monthly compensation not to exceed the monthly salary of the county attorney. Whenever any such attorney is employed, the county clerk of said county shall certify to the attorney general the name of such acting county attorney and the fact of his employment.

(2) Whenever any licensed attorney shall establish residence in said county and become eligible to hold the office of county attorney, it shall be the duty of the board to appoint such attorney to fill said vacancy, and the employment of said special attorney shall thereupon cease.

History: En. Sec. 4, Ch. 61, L. 1909; re-en. Sec. 4486, R.C.M. 1921; re-en. Sec. 4486, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1947; R.C.M. 1947, 16-1126(part).

7-4-2703. Limitation on number of deputies. In counties of the first and second class, the county attorney may appoint one chief deputy and one deputy. In all other counties, the county attorney may appoint a chief deputy or a deputy only with the approval of the board of county commissioners.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part); amd. Sec. 17, Ch. 443, L. 1979.

7-4-2704. Limitations on activities of county attorneys and deputy county attorneys. (1) The county attorney, except for his own services, must not present any claim, account, or other demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(2) In each county with a population in excess of 30,000, the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except that he may represent himself and his immediate family and except as provided in subsection (4).

(3) Any deputy county attorney in a county with a population in excess of 30,000 who is paid 70% or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law except as to those matters in which he has a direct interest and except as provided in subsection (4).

(4) Any elected or appointed county attorney and any deputy county attorney shall, upon demonstration of need to the board of county commissioners, be granted a period of time, not to exceed 3 months from the date he takes office, to complete any pending matters remaining from any previous private practice of law. During such time the county attorney and any appointed deputy are bound by the customary rules of ethics applicable to attorneys at law.

History: **Ap. p. Sec. 4453, Pol. C. 1895; re-en. Sec. 3055, Rev. C. 1907; re-en. Sec. 4822, R.C.M. 1921; Cal. Pol. C. Sec. 4258; re-en. Sec. 4822, R.C.M. 1935; Sec. 16-3104, R.C.M. 1947; Ap. p. Secs. 1, 4, Ch. 102, L. 1975; Secs. 16-3106, 16-3108, R.C.M. 1947; R.C.M. 1947, 16-3104, 16-3106, 16-3108; amd. Sec. 1, Ch. 300, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "and except as provided in subsection (4)" at the end of (2) and (3); added subsection (4).

7-4-2705. Employment of special counsel in certain counties. Except in counties of the first class, the board of county commissioners has the power, whenever in its judgment the ends of justice or the interest of the county require it, to employ or authorize the county attorney to employ special counsel to assist in the prosecution of any criminal case pending in such county or to represent said county in any civil action in which such county is a party.

History: **En. Sec. 4, Ch. 61, L. 1909; re-en. Sec. 4486, R.C.M. 1921; re-en. Sec. 4486, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1947; R.C.M. 1947, 16-1126(part).**

7-4-2706. County attorney to be full or part time — resolution — salary. (1) In any county with a population of less than 30,000, the county commissioners may, upon the consent of the county attorney, on July 1 of any year by resolution establish the office of county attorney as a full-time position subject to the provisions of 7-4-2701 and 7-4-2704. The salary for this position is the salary provided by 7-4-2503 for the office of county attorney in a county with a population in excess of 30,000.

(2) In any county in which the office of county attorney has been established as a full-time position under subsection (1), the county commissioners may, by resolution and upon the consent of the county attorney, establish the office as a part-time position on July 1 of any year.

History: **En. Sec. 1, Ch. 669, L. 1979; amd. Sec. 1, Ch. 301, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (2).

7-4-2707. Contract for services of county attorney from another county. The county commissioners of any county may, upon the consent of the county attorney, by agreement with the commissioners and county attorney of any other county, contract in writing to employ any other county attorney or attorney member of his staff to perform civil or criminal legal services for the county at a reasonable rate. The provisions of this section are subject to the provisions of interlocal cooperative agreements.

History: **En. Sec. 2, Ch. 669, L. 1979.**

7-4-2708. Contract for services of any other attorney. In any county, the county commissioners may, upon consent of the county attorney, employ any other attorney licensed in Montana to perform any legal service in connection with the civil business of the county.

History: En. Sec. 3, Ch. 669, L. 1979.

7-4-2709 and 7-4-2710 reserved.

7-4-2711. County attorney to be legal advisor of county and other subdivisions. (1) The county attorney is the legal adviser of the board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or illegal. He must defend all suits brought against his county.

(2) The county attorney must:

(a) give, when required and without fee, his opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts in unincorporated territories, towns, or villages within his county; and

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee.

History: Ap. p. Sec. 4451, Pol. C. 1895; re-en. Sec. 3053, Rev. C. 1907; re-en Sec. 4820, R.C.M. 1921; Cal. Pol. C. Sec. 4257; re-en. Sec. 4820, R.C.M. 1935; Sec. 16-3102, R.C.M. 1947; Ap. p. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; Sec. 16-3101, R.C.M. 1947; R.C.M. 1947, 16-3101(part), 16-3102; amd. Sec. 1, Ch. 533, L. 1979.

7-4-2712. Prosecutorial duties. The county attorney is the public prosecutor and must:

(1) institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he has information that such offenses have been committed and for that purpose, whenever not otherwise officially engaged, must attend upon the magistrate in cases of arrest and attend before and give advice to the grand jury whenever cases are presented to them for their consideration;

(2) draw all indictments and informations.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part).

7-4-2713. Actions to recover money. The county attorney must prosecute all recognizances forfeited in the courts of record and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part).

7-4-2714. Recovery of illegally paid money. Whenever the board of county commissioners, without authority of law, orders any money paid as a salary or fee or for any other purpose and such money has been actually paid or whenever any other county officer has drawn a warrant in his own favor or in favor of any other person without being authorized by the board or by law and the same has been paid, the county attorney is empowered and it is his duty to institute an action in the name of the county against such person to recover the money and 25% damages for the use thereof. No order of the board therefor is necessary to maintain this suit. Whenever the money has not been paid on the order or warrant, it is the duty of the county attorney, upon receiving notice thereof, to commence an action in the name of the county for restraining the payment of the same, and no order of the board is necessary to maintain the action.

History: En. Secs. 4200, 4452, Pol. C. 1895; re-en. Secs. 2880, 3054, Rev. C. 1907; re-en. Secs. 4451, 4821, R.C.M. 1921; re-en. Secs. 4451, 4821, R.C.M. 1935; R.C.M. 1947, 16-812, 16-3103; amd. Sec. 18, Ch. 443, L. 1979.

7-4-2715. Records and reports. The county attorney must:

(1) keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially and of the proceedings therein;

(2) deliver receipts for money or property received in his official capacity and file duplicates thereof with the county treasurer;

(3) on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by his oath, of all money received by him in his official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(4), (5), (8).

7-4-2716. Duties related to state matters. The county attorney must:

(1) attend the district court and conduct, on behalf of the state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party or in which it may be beneficially interested, at all times and in all places within the limits of his county;

(2) when ordered or directed by the attorney general to do so, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding;

(3) defend all suits brought against the state.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part).

7-4-2717. Other duties. The county attorney must perform such other duties as are prescribed by law.

History: En. Sec. 4454, Pol. C. 1895; re-en. Sec. 3056, Rev. C. 1907; re-en. Sec. 4823, R.C.M. 1921; re-en. Sec. 4823, R.C.M. 1935; R.C.M. 1947, 16-3105.

Part 28

Office of County Surveyor

7-4-2801. Qualifications for county surveyor and deputies. (1) A county surveyor shall be a professional engineer, not less than 22 years of age, who shall have been in active practice of his profession for at least 3 years and who shall have had responsible charge of work as principal or assistant for at least 1 year. Graduation from a school of engineering shall be considered as equivalent to 2 years of active practice.

(2) All deputies must also have a practical knowledge of engineering.

History: En. Sec. 1, Ch. 50, L. 1919; re-en. Sec. 4835, R.C.M. 1921; re-en. Sec. 4835, R.C.M. 1935; R.C.M. 1947, 16-3301.

7-4-2802. Employment of assistants to surveyor. If a party for whom the county survey is made does not furnish the chainmen and markers, the surveyor may employ the necessary chainmen and markers and receive the reasonable hire of all assistants necessarily employed.

History: En. Sec. 4474, Pol. C. 1895; re-en. Sec. 3061, Rev. C. 1907; re-en. Sec. 4843, R.C.M. 1921; Cal. Pol. C. Sec. 4272; re-en. Sec. 4843, R.C.M. 1935; R.C.M. 1947, 16-3309.

7-4-2803. Situations involving use of other surveyors. (1) Whenever the county surveyor is interested in any land the title to which is in dispute and a survey thereof is necessary, the court must direct the survey to be made by some disinterested person. The person so appointed is, for the purpose, authorized to administer and certify oaths. He shall return the survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the county surveyor would be entitled to for similar services.

(2) Whenever the county surveyor neglects, refuses, or is incompetent to perform the duties prescribed in this part, it is the duty of the board of county commissioners to employ another competent civil engineer, who shall be subject to the laws governing the county surveyor.

History: (1)En. Sec. 4475, Pol. C. 1895; re-en. Sec. 3062, Rev. C. 1907; re-en. Sec. 4844, R.C.M. 1921; Cal. Pol. C. Sec. 4275; re-en. Sec. 4844, R.C.M. 1935; Sec. 16-3310, R.C.M. 1947; (2)En. Sec. 4478, Pol. C. 1895; re-en. Sec. 3065, Rev. C. 1907; re-en. Sec. 4847, R.C.M. 1921; re-en. Sec. 4847, R.C.M 1935; Sec. 16-3313, R.C.M 1947; R.C.M. 1947, 16-3310, 16-3313; amd. Sec. 19, Ch. 443, L. 1979.

7-4-2804 through 7-4-2810 reserved.

7-4-2811. Function of county surveyor. (1) The county surveyor shall work under the direction of the board of county commissioners. He shall have no power or authority to incur any indebtedness on the part of the county without the prior order or approval of the board. The county surveyor shall be provided with suitable office, together with necessary equipment, to perform his various duties as prescribed by law.

(2) He shall make all surveys, establish all grades, and prepare plans, specifications, and estimates.

(3) He shall make progress reports and estimates of all work and such other facts in relation thereto as may be required by the board.

History: Ap. p. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919; re-en. Sec. 4836, R.C.M. 1921; re-en. Sec. 4836, R.C.M. 1935; amd. Sec. 12-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 274, L. 1967; Sec. 16-3302, R.C.M. 1947; Ap. p. Sec. 4, Ch. 50, L. 1919; re-en. Sec. 4838, R.C.M. 1921; re-en. Sec. 4838, R.C.M. 1935; Sec. 16-3304, R.C.M. 1947; R.C.M. 1947, 16-3302(1) thru (3), 16-3304.

7-4-2812. Duties of county surveyor related to roads and bridges in certain counties. (1) The county surveyor of all counties having a total registered vote of 20,000 or over at the last general election shall be responsible for supervision and direction of all highways, bridges, and causeways within his county.

(2) In the exercise of such control, supervision, and direction, he shall:

(a) keep all highways and bridges free and clear of all obstructions;

(b) cause highways to be graded, when needed, and maintain and repair the same;

(c) cause all bridges and causeways to be made, when needed, and keep the same maintained and in good repair and renew the same when destroyed;

(d) make all surveys;

(e) establish grades;

(f) prepare plans, specifications, and estimates;

(g) keep accurate cost data;

(h) approve all claims against the county for all highway, bridge, and causeway construction, maintenance, and repair, prior to presentation to the board of county commissioners;

(i) employ deputies, men, and teams and discharge at his pleasure such deputies, men, and teams and determine how, when, and where such deputies, men, and teams shall work;

(j) purchase and secure all highway and bridge machinery and machinery equipment and tools to be used upon highways and bridges, with the appoval of the board;

(k) purchase and secure all highway, bridge, and causeway supplies and materials, with the approval of the board;

(l) from time to time, make reports and estimates of all matters relating to highways and bridges when required by the board; and

(m) perform such other duties as are now or which may be hereafter required by law.

(3) In the exercise of such control, supervision, and direction, he shall receive the annual salary provided by law for salaried county surveyors and other county officials.

History: En. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919; re-en. Sec. 4836, R.C.M. 1921; re-en. Sec. 4836, R.C.M. 1935; amd. Sec. 12-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 274, L. 1967; R.C.M. 1947, 16-3302(4).

7-4-2813. Maintenance of records. (1) The county surveyor shall keep in his office a record of all surveys and plats made or caused to be made by him, to be recorded in proper books provided for that purpose. He shall also keep on file and for record, in suitable plat books provided therefor, copies of all plats made or caused to be made by him and have recorded therein a description of every public highway within the county.

(2) All such books of record, together with original drawings and original book or books of field notes, calculations, and computations, are and shall remain the property of the county and shall be preserved as such.

History: En. Sec. 3, Ch. 50, L. 1919; re-en. Sec. 4837, R.C.M. 1921; re-en. Sec. 4837, R.C.M. 1935; R.C.M. 1947, 16-3303.

7-4-2814. Preparation of surveys. (1) The county surveyor must make any survey that may be required by order of the court or upon application of any person; keep a correct and fair record of all surveys made by him; number them progressively in the order made; and preserve a copy of the field notes and calculations of each survey and endorse thereon its proper number, a copy of which and a fair and accurate plat, together with the certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law. In all surveys the courses must be expressed according to the true meridian and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey.

(2) He must also keep a correct and plain record of all surveys made by him for the county or for individuals or corporations which pertain to the public roads or bridges, in a book provided for that purpose by the county, which shall be transmitted to his successor in office.

History: **Ap. p. Sec. 4470, Pol. C. 1895; re-en. Sec. 3057, Rev. C. 1907; re-en. Sec. 4839, R.C.M. 1921; Cal. Pol. C. Sec. 4268; re-en. Sec. 4839, R.C.M. 1935; Sec. 16-3305, R.C.M. 1947; Ap. p. Sec. 4473, Pol. C. 1895; re-en. Sec. 3060, Rev. C. 1907; re-en. Sec. 4842, R.C.M. 1921; Cal. Pol. C. Sec. 4271; re-en. Sec. 4842, R.C.M 1935; Sec. 16-3308, R.C.M 1947; R.C.M. 1947, 16-3305, 16-3308.**

7-4-2815. Surveys involving land in two counties. (1) Any person owning or claiming lands which are divided by county lines and wishing to have the same surveyed may apply to the surveyor of any county in which any part of such land is situated. On such application being made, the county surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

(2) When land the title to which is in dispute before any court is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated.

History: **(1)En. Sec. 4471, Pol. C. 1895; re-en. Sec. 3058, Rev. C. 1907; re-en. Sec. 4840, R.C.M. 1921; Cal. Pol. C. Sec. 4269; re-en. Sec. 4840, R.C.M. 1935; Sec. 16-3306, R.C.M. 1947; (2)En. Sec. 4472, Pol. C. 1895; re-en. Sec. 3059, Rev. C. 1907; re-en. Sec. 4841, R.C.M. 1921; Cal. Pol. C. Sec. 4270; re-en. Sec. 4841, R.C.M 1935; Sec. 16-3307, R.C.M 1947; R.C.M. 1947, 16-3306, 16-3307.**

7-4-2816 through 7-4-2820 reserved.

7-4-2821. Fees of county surveyor. The board of county commissioners shall set the county surveyor's fees by resolution.

History: **En. Sec. 4639, Pol. C. 1895; re-en. Sec. 3172, Rev. C. 1907; re-en. Sec. 4921, R.C.M. 1921; re-en. Sec. 4921, R.C.M. 1935; amd. Sec. 1, Ch. 199, L. 1953; R.C.M. 1947, 25-235; amd. Sec. 1, Ch. 232, L. 1979.**

Part 29

Office of County Coroner

7-4-2901. Appointment of deputy coroners. (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist him or act in his absence.

(2) A deputy coroner may be the coroner from another county.

History: **En. 82-444 by Sec. 18, Ch. 530, L. 1977; R.C.M. 1947, 82-444.**

7-4-2902. Justice of peace to act as coroner in certain cases. (1) If the office of coroner is vacant or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county with the like authority and subject to the same obligations and penalties as the coroner.

(2) A justice of the peace acting as coroner is allowed the same salary as the coroner for that portion of time he actually spends discharging the duties of coroner.

History: **(1)En. Sec. 4494, Pol. C. 1895; re-en. Sec. 3070, Rev. C. 1907; re-en. Sec. 4852, R.C.M. 1921; Cal. Pol. C. Sec. 4289; re-en. Sec. 4852, R.C.M. 1935; Sec. 16-3405, R.C.M. 1947; (2)En. Sec.**

4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; Sec. 25-236, R.C.M. 1947; R.C.M. 1947, 16-3405, 25-236(part); amd. Sec. 3, Ch. 371, L. 1979.

7-4-2903. Stenographer for coroner in certain counties. In each county having a population of 45,000 or more by the latest federal census enumeration, the coroner may, with the consent of the county commissioners, appoint a stenographer. The stenographer shall hold such position during the pleasure of the coroner making the appointment and shall receive as salary a sum to be fixed by the board of county commissioners, to be paid monthly out of the contingent fund of the county upon the order of the board.

History: En. Sec. 1, Ch. 8, L. 1911; re-en. Sec. 4855, R.C.M. 1921; re-en. Sec. 4855, R.C.M. 1935; amd. Sec. 1, Ch. 233, L. 1947; amd. Sec. 1, Ch. 211, L. 1951; R.C.M. 1947, 16-3408.

7-4-2904 through 7-4-2910 reserved.

7-4-2911. Duties of county coroner. (1) The coroner must hold inquests as provided in Title 46, chapter 4, parts 1 and 2.

(2) In the cases specified in 25-3-205, the coroner must discharge the duties of sheriff. If acting as sheriff, the coroner is allowed the same salary as sheriff or the same fees as constable for like services.

History: (1)En. Sec. 4490, Pol. C. 1895; re-en. Sec. 3066, Rev. C. 1907; re-en. Sec. 4848, R.C.M. 1921; Cal. Pol. C. Sec. 4285; re-en. Sec. 4848, R.C.M. 1935; amd. Sec. 22, Ch. 530, L. 1977; Sec. 16-3401, R.C.M. 1947; (2)Ap. p. Sec. 4495, Pol. C. 1895; re-en. Sec. 3071, Rev. C. 1907; re-en. Sec. 4852, R.C.M. 1921; Cal. Pol. C. Sec. 4290; re-en. Sec. 4852, R.C.M. 1935; Sec. 16-3406, R.C.M. 1947; Ap. p. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; Sec. 25-236, R.C.M. 1947; R.C.M. 1947, 16-3401, 16-3406, 25-236(part); amd. Sec. 4, Ch. 371, L. 1979; amd. Sec. 20, Ch. 443, L. 1979.

7-4-2912. Coroner's register. The county coroner shall keep an official register, to be labeled "coroner's register", as provided in 46-4-207.

History: En. Sec. 4496, Pol. C. 1895; re-en. Sec. 3072, Rev. C. 1907; re-en. Sec. 4854, R.C.M. 1921; re-en. Sec. 4854, R.C.M. 1935; R.C.M. 1947, 16-3407; amd. Sec. 21, Ch. 443, L. 1979.

7-4-2913. Payment of costs of inquest. Whenever an inquest is held because of the death of an individual confined in the state prison, the county clerk of the county where the inquest is held shall make out a statement of all the costs incurred by the county in the inquest, properly certified by the coroner of the county. This statement shall be sent to the department of institutions for approval, and after approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the inquest was held.

History: En. Sec. 2, Ch. 122, L. 1909; re-en. Sec. 4857, R.C.M. 1921; re-en. Sec. 4857, R.C.M. 1935; amd. Sec. 86, Ch. 199, L. 1965; R.C.M. 1947, 16-3410; amd. Sec. 22, Ch. 443, L. 1979.

7-4-2914. Statement required before allowing accounts of coroner. Before allowing the accounts of the coroner, the board of county commissioners must require him to file with the clerk of the board a statement, in writing and verified by his affidavit, showing:

(1) the amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement;

(2) the disposition made of such property.

History: **En. Sec. 4493, Pol. C. 1895; re-en. Sec. 3069, Rev. C. 1907; re-en. Sec. 4851, R.C.M. 1921; Cal. Pol. C. Sec. 4288; re-en. Sec. 4851, R.C.M. 1935; R.C.M. 1947, 16-3404.**

7-4-2915. Dead bodies to be held pending investigation. A dead body in the custody of a county coroner shall be held until such time as the coroner after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body to determine the reasonable and true cause of death or that the body is no longer necessary to assist any local investigations.

History: **En. Sec. 1, Ch. 378, L. 1979.**

7-4-2916. Removal of a dead body. (1) If a county does not provide a morgue or morgue facilities for the use of the county coroner, the coroner may use existing hospital facilities for such purposes.

(2) The person lawfully entitled to custody of the deceased person's remains shall be notified of the death as soon as is practicable, and at this time the coroner shall obtain permission to release the body to a funeral home.

(3) A post-mortem examination may be conducted at a funeral home when so ordered by the county coroner.

History: **En. Sec. 2, Ch. 378, L. 1979.**

7-4-2917 through 7-4-2920 reserved.

7-4-2921. Repealed. Sec. 5, Ch. 371, L. 1979.

History: **En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; R.C.M. 1947, 25-236(part).**

7-4-2922. Repealed. Sec. 5, Ch. 371, L. 1979.

History: **En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; R.C.M. 1947, 25-236(part).**

7-4-2923. Computation of mileage for reimbursement. When any coroner serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case must be allowed for less than 1 mile actually traveled.

History: **En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4900, R.C.M. 1921; re-en. Sec. 4900, R.C.M. 1935; R.C.M. 1947, 25-216(part).**

Part 30

Offices of Sheriff, County Treasurer, County Auditor, Public Administrator, County Superintendent of Schools, and Clerk of District Court

7-4-3001. Office of sheriff. The duties and functions of the sheriff's department are provided for in part 21, chapter 32.

History: **En. by Code Commissioner, 1979.**

7-4-3002. Office of county treasurer. The duties and functions of the treasurer's office are provided for in part 21, chapter 6.

History: En. by Code Commissioner, 1979.

7-4-3003. Office of county auditor. The duties and functions of the auditor's office are provided for in part 24, chapter 6.

History: En. by Code Commissioner, 1979.

7-4-3004. Office of public administrator. The powers and duties of the public administrator are defined by Title 72, chapter 15.

History: New section recommended by code commissioner, 1921; re-en. Sec. 4858, R.C.M. 1935; R.C.M.1947, 16-3501.

7-4-3005. Office of county superintendent of schools. The duties and functions of the office of county superintendent of schools are provided for in Title 20.

History: En. by Code Commissioner, 1979.

7-4-3006. Limitation on number of deputy district court clerks. The whole number of deputies allowed the clerk of the district court may not exceed one chief deputy and up to:

(1) six deputies in counties of the first or second class;

(2) four deputies in counties of the third or fourth class having more than one district judge;

(3) two deputies in counties of the third or fourth class having one district judge;

(4) one deputy in counties of the fifth, sixth, or seventh class.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 23, Ch. 443, L. 1979.

Parts 31 through 40 reserved

Part 41

Municipal Officers in General

7-4-4101. Officers of city of first class. (1) The officers of a city of the first class consist of:

(a) one mayor;

(b) two aldermen from each ward;

(c) one city judge.

(2) The officers listed in subsection (1) must be elected by the qualified electors of the city, as hereinafter provided.

(3) There may also be appointed by the mayor, with the advice and consent of the council:

(a) one city attorney;

(b) one city clerk;

(c) one city treasurer or finance officer or one city clerk-treasurer;

(d) one chief of police;
(e) one assessor;
(f) one street commissioner;
(g) one city jailer;
(h) one city surveyor; and
(i) any other officers necessary to carry out the provisions of this title.

(4) The city council may by ordinance prescribe the duties of all city officers and fix their compensation.

History: En. Sec. 4740, Pol. C. 1895; re-en. Sec. 3216, Rev. C. 1907; re-en. Sec. 4995, R.C.M. 1921; re-en. Sec. 4995, R.C.M. 1935; R.C.M. 1947, 11-701; amd. Sec. 1, Ch. 447, L. 1979.

7-4-4102. Officers of city of second or third class. (1) The officers of a city of the second or third class consist of:
(a) one mayor;
(b) two aldermen from each ward;
(c) one city judge.

(2) The officers listed in subsection (1), except the city judge for a city of the third class, must be elected by the qualified electors of the city as hereinafter provided.

(3) The governing body of a city of the third class may by ordinance determine whether the office of city judge shall be filled by appointment by the governing body or by election.

(4) There may also be appointed by the mayor, with the advice and consent of the council:
(a) one city attorney;
(b) one city clerk, who is ex officio city assessor;
(c) one city treasurer or one city clerk-treasurer;
(d) one chief of police; and
(e) any other officers necessary to carry out the provisions of this title.

(5) The city council may prescribe the duties of all city officers and fix their compensation.

History: En. Sec. 4741, Pol. C. 1895; re-en. Sec. 3217, Rev. C. 1907; re-en. Sec. 4996, R.C.M. 1921; re-en. Sec. 4996, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1975; R.C.M. 1947, 11-702(part); amd. Sec. 2, Ch. 447, L. 1979; amd. Sec. 1, Ch. 506, L. 1979.

7-4-4103. Officers of towns. (1) The officers of a town consist of:
(a) one mayor;
(b) two aldermen from each ward; and
(c) one city judge.

(2) The officers listed in subsection (1), except for the city judge, must be elected by the qualified electors of the town, as hereinafter provided.

(3) The governing body of the town shall appoint a city judge or may designate a justice of the peace to act as city judge as provided in 3-11-205.

(4) There may be appointed by the mayor, with the advice and consent of the council:
(a) one clerk, who may be ex officio assessor and tax collector and a member of the council;
(b) one marshal, who may be ex officio street commissioner; and
(c) any other officers necessary to carry out the provisions of this title.

(5) The town council may prescribe the duties of all town officers and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4742, Pol. C. 1895; re-en. Sec. 3218, Rev. C. 1907; re-en. Sec. 4997, R.C.M. 1921; re-en. Sec. 4997, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1974; R.C.M. 1947, 11-703; amd. Sec. 1, Ch. 269, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (1)(c); inserted "except for the city judge" in (2); inserted subsection (3).

7-4-4104. General qualifications for municipal office. No person is eligible to any municipal office, elective or appointive:

(1) who is not a citizen of the United States; and

(2) who has not met the qualifications prescribed by law or by ordinance adopted by the governing body of a city or town.

History: En. Sec. 365, 5th Div. Comp. Stat. 1887; amd. Sec. 4752, Pol. C. 1895; re-en. Sec. 3228, Rev. C. 1907; re-en. Sec. 5007, R.C.M. 1921; re-en. Sec. 5007, R.C.M. 1935; amd. Sec. 2, Ch. 76, L. 1961; R.C.M. 1947, 11-713; amd. Sec. 2, Ch. 506, L. 1979; amd. Sec. 2, Ch. 269, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "except for city judges of third-class cities" after "who" in (2); substituted "met the qualifications prescribed by law or by ordinance adopted by the governing body of a city or town" for "resided in the town or city or an area which has been annexed by such town or city for at least 2 years immediately preceding his election or appointment and is not a qualified elector thereof" after "has not" in (2).

7-4-4105. Authority to abolish appointive municipal offices. The city or town council may abolish, by a majority vote of the council, any office, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council and may discharge any officer so appointed.

History: En. Sec. 4744, Pol. C. 1895; re-en. Sec. 3220, Rev. C. 1907; re-en. Sec. 4999, R.C.M. 1921; re-en. Sec. 4999, R.C.M. 1935; R.C.M. 1947, 11-705; amd. Sec. 24, Ch. 443, L. 1979; amd. Sec. 3, Ch. 506, L. 1979.

7-4-4106. Authority to consolidate municipal offices. The city or town council may by ordinance consolidate any of the offices, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council and may require any of the elected officers to perform any of the duties of an appointed officer whose office has been abolished.

History: En. Sec. 4745, Pol. C. 1895; re-en. Sec. 3221, Rev. C. 1907; re-en. Sec. 5000, R.C.M. 1921; re-en. Sec. 5000, R.C.M. 1935; R.C.M. 1947, 11-706; amd. Sec. 4, Ch. 506, L. 1979.

7-4-4107. Commencement of term of office. (1) The terms of all officers elected at a municipal election are to commence on the first Monday in January after such election.

(2) Officers appointed by the mayor with the advice and consent of the council enter upon their duties within 10 days after receiving notice of their appointment.

History: En. Secs. 4751, 4759, Pol. C. 1895; re-en. Secs. 3227, 3235, Rev. C. 1907; re-en. Secs. 5006, 5014, R.C.M. 1921; re-en. Secs. 5006, 5014, R.C.M. 1935; R.C.M. 1947, 11-712, 11-720; amd. Sec. 27, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "January" for "May" in (1).

7-4-4108. Oath of office. Each appointed or elected officer of a city or town must take and subscribe the constitutional oath of office before entering upon office.

History: Ap. p. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; Sec. 11-719, R.C.M. 1947; Ap. p. Sec. 4772, Pol. C. 1895; re-en. Sec. 3248, Rev. C. 1907; re-en. Sec. 5027, R.C.M. 1921; re-en. Sec. 5027, R.C.M. 1935; Sec. 11-733, R.C.M. 1947; R.C.M. 1947, 11-719(part), 11-733.

7-4-4109. Official bond. Each officer of a city or town who is required to give bond shall file the same, duly approved, within 10 days after receiving notice of his election or appointment or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; R.C.M. 1947, 11-719(part).

7-4-4110. Duties of officers not otherwise provided for. (1) The city or town council has power to prescribe the duties of all officers of the city or town, subject to the limitations mentioned in this code.

(2) The duties of the street commissioner, chief of the fire department, city surveyor, and other city officers not provided in this code may be prescribed by ordinance.

History: (1)En. Subd. 47, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.46, R.C.M. 1935; Sec. 11-949, R.C.M. 1947; (2)En. Sec. 4789, Pol. C. 1895; re-en. Sec. 3258, Rev. C. 1907; re-en. Sec. 5028, R.C.M. 1921; re-en. Sec. 5028, R.C.M. 1935; Sec. 11-734, R.C.M. 1947; R.C.M. 1947, 11-734(part), 11-949(part).

7-4-4111. Determination of vacancy in municipal office. An office becomes vacant on the happening of any of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that he is mentally ill;

(3) his resignation;

(4) his removal from office;

(5) his absence from the city or town continuously for 10 days without the consent of the council;

(6) his open neglect or refusal to discharge his duties;

(7) his ceasing to be a resident of the city or town or, in the case of an alderman, his ceasing to be a resident of his ward;

(8) his ceasing to discharge the duty of his office for a period of 3 consecutive months, except when prevented by illness or when absent from the city or town by permission of the governing body;

(9) his conviction of a felony or of any offense involving moral turpitude or a violation of his official duties;

(10) his refusal or neglect to file his official bond within the time prescribed;

(11) the decision of a competent tribunal declaring void his election or appointment.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; R.C.M. 1947, 11-719(part); amd. Sec. 1, Ch. 233, L. 1981.

Compiler's Comments

1981 Amendment: Substantially rewritten based upon 2-16-501; deleted former subsection (1) relating to qualifying for office; added all of the introductory clause except "office becomes vacant"; added subsections (1) through (4) and

(8) through (11); amended subsections (5) through (7) to conform to added material.

7-4-4112. Filling of vacancy. (1) When any vacancy occurs in any elective office, this position shall be considered open and subject to nomination and election at the next general municipal election in the same manner as the election of any other person holding the same office, except the term of office shall be limited to the unexpired term of the person who originally created the vacancy. Pending such election and qualification the council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until his successor is elected and qualified.

(2) A vacancy in the office of alderman must be filled from the ward in which the vacancy exists.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R.C.M. 1921; amd. Sec. 1, Ch. 26, L. 1974; R.C.M. 1947, 11-721(part); amd. Sec. 1, Ch. 457, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "this position ... elected and qualified" in (1) for "the council, by a majority vote of the members, may fill the same for the unexpired term and until the qualification of the successor"; and deleted "but if the council shall fail to fill such vacancy before the time for the next election, the qualified electors of such city or ward may nominate and elect a successor to such office" after "vacancy exists" in (2).

Effective Date: Section 2, Ch. 457, L. 1981, provided: "This act is effective on passage and approval." Approved April 20, 1981.

7-4-4113. Removal of appointed officer. The council, upon written charges to be entered upon their journal, after notice to the party, and after trial by the council, may remove any nonelected officer by vote of two-thirds of all the members-elect.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R.C.M. 1921; amd. Sec. 1, Ch. 26, L. 1974; R.C.M. 1947, 11-721(part).

7-4-4114. Municipal executive officers. (1) The executive officers of a city or town are the mayor, the marshal (if there is one), and such officers as the council may provide for assessment; collecting, auditing, safekeeping, and disbursing the revenue; and keeping the records and journals of the city or town.

(2) The mayor is the chief executive officer of the city or town.

History: (1)En. Sec. 4780, Pol. C. 1895; re-en. Sec. 3249, Rev. C. 1907; re-en. Sec. 5029, R.C.M. 1921; Cal. Pol. C. Sec. 4385; re-en. Sec. 5029, R.C.M. 1935; Sec. 11-801, R.C.M. 1947; (2)En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; Sec. 11-802, R.C.M. 1947; R.C.M. 1947, 11-801, 11-802(part); amd. Sec. 25, Ch. 443, L. 1979.

Part 42

Compensation of Municipal Officers

7-4-4201. Salary of officers. The council shall determine by ordinance or resolution the salaries and compensation of elected and appointed city officers and all city employees.

History: Ap.p. Secs. 4763, 4789, Pol. C. 1895; re-en. Secs. 3239, 3258, Rev. C. 1907; re-en. Secs. 5018, 5028, R.C.M. 1921; re-en. Secs. 5018, 5028, R.C.M. 1935; Secs. 11-724, 11-734, R.C.M. 1947; Ap.p. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R.C.M. 1921; re-en. Sec. 5019, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965; amd. Sec. 1, Ch. 224, L. 1967; amd. Sec. 1, Ch. 297, L. 1969; Sec. 11-725, R.C.M. 1947; Ap.p. Sec. 4767, Pol. C. 1895; re-en. Sec. 3243, Rev. C. 1907; re-en. Sec. 5022, R.C.M. 1921; re-en. Sec. 5022, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1939; amd. Sec. 1, Ch. 46, L. 1947; amd. Sec. 3, Ch. 76, L. 1953; amd. Sec. 2, Ch. 170, L. 1955; amd. Sec. 3, Ch. 179, L. 1961; amd. Sec. 2, Ch. 142, L. 1963; amd. Sec. 3, Ch. 158, L. 1965; amd. Sec. 1, Ch. 189, L. 1967; Sec. 11-728, R.C.M. 1947; Ap.p. Sec. 4768, Pol. C. 1895; re-en. Sec. 3244, Rev. C. 1907; re-en. Sec. 5023, R.C.M. 1921; re-en. Sec. 5023, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1943; amd. Sec. 2, Ch. 188, L. 1949; amd. Sec. 2, Ch. 115, L. 1951; amd. Sec. 4, Ch. 76, L. 1953; amd. Sec. 3, Ch. 170, L. 1955; amd. Sec. 4, Ch. 179, L. 1961; amd. Sec. 4, Ch. 158, L. 1965; amd. Sec. 1, Ch. 155, L. 1967; Sec. 11-729, R.C.M. 1947; Ap.p. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R.C.M. 1921; re-en. Sec. 5025, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1945; amd. Sec. 3, Ch. 188, L. 1949; amd. Sec. 3, Ch. 115, L. 1951; amd. Sec. 5, Ch. 76, L. 1953; amd. Sec. 4, Ch. 170, L. 1955; amd. Sec. 5, Ch. 179, L. 1961; amd. Sec. 5, Ch. 158, L. 1965; amd. Sec. 1, Ch. 156, L. 1967; amd. Sec. 2, Ch. 146, L. 1974; Sec. 11-731, R.C.M. 1947; R.C.M. 1947, 11-724, 11-725(part), 11-728, 11-729, 11-731, 11-734(part); amd. Sec. 1, Ch. 221, L. 1979; amd. Sec. 1, Ch. 428, L. 1979; amd. Sec. 26, Ch. 443, L. 1979.

7-4-4202. Minimum salary of chief of police. (1) From and after July 1, 1969, the salary of the chief of police in cities of the first class shall not be less than $650 per month for the first year of service and thereafter at least $650 per month plus 1% of said minimum base monthly salary for each additional year of service up to and including the 20th year of such additional service.

(2) From and after July 1, 1957, the annual salary and compensation of the chief of police in cities of the second class shall be not less than $425 per month for the first year of service and thereafter at least $425 per month plus 1% of said minimum base monthly salary for each additional year of service up to and including the 20th year of such additional service.

(3) From and after July 1, 1957, the salary and compensation of the chief of police in cities of the third class shall be not less than $325 per month for the first year of service and thereafter at least $325 per month plus 1% of said minimum base monthly salary for each additional year of service up to and including the 20th year of such additional service.

(4) Subject to such minimum, the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: (1), (4)En. Sec. 13, Ch. 136, L. 1907; Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R.C.M. 1921; re-en. Sec. 5107, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1951; amd. Sec. 1, Ch. 29, L. 1957; amd. Sec. 1, Ch. 356, L. 1969; Sec. 11-1815, R.C.M. 1947; (2), (3)En. Sec. 4769, Pol. C. 1895; re-en. Sec. 3245, Rev. C. 1907; amd. Sec. 1, Ch. 55, L. 1911; re-en. Sec. 5024, R.C.M. 1921; re-en. Sec. 5024, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1943; amd. Sec. 1, Ch. 234, L. 1947; amd. Sec. 1, Ch. 10, L. 1951; amd. Sec. 1, Ch. 30, L. 1957; Sec. 11-730, R.C.M. 1947; R.C.M. 1947, 11-730, 11-1815.

Part 43

Office of Mayor

7-4-4301. Qualifications for mayor. (1) No person is eligible for the office of mayor unless he:

(a) is at least 21 years old;

(b) has been a resident of the state for at least 3 years; and

(c) has been a resident for at least 2 years preceding the election to office of the city or town or an area which has been annexed by the city or town.

(2) The office of mayor of a city or town is considered vacant if the individual elected as mayor ceases to be a resident of the city or town.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907; re-en. Sec. 5004, R.C.M. 1921; re-en. Sec. 5004, R.C.M. 1935; amd. Sec. 1, Ch. 76, L. 1961; amd. Sec. 1, Ch. 177, L. 1974; R.C.M. 1947, 11-710; amd. Sec. 2, Ch. 420, L. 1979; amd. Sec. 27, Ch. 443, L. 1979.

7-4-4302. Term of office. The mayor shall hold office for a term of 4 years and until the qualification of his successor.

History: En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3324, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part).

7-4-4303. Powers of mayor related to municipal officers, personnel, and citizens. The mayor has power to:

(1) nominate and, with the consent of the council, appoint all nonelective officers of the city or town provided for by the council, except as provided in this title;

(2) suspend and, with the consent of the council, remove any nonelective officer, stating in the suspension or removal the cause thereof;

(3) supervise the discharge of official duty by all subordinate officers;

(4) require of any of the officers of a city or town an exhibit of such officer's books and papers;

(5) call on every citizen of the city or town over the age of 18 years to aid in the enforcement of the laws and ordinances in case of riot;

(6) call out the militia to aid the mayor in suppressing riots or other disorderly conduct, preventing and extinguishing fires, securing the peace and safety of the city, or carrying into effect any law or ordinance.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-4-4304. Effect of failure to obey call from mayor for assistance. Any person who does not obey a call pursuant to 7-4-4303(5) or (6) forfeits to the city or town a fine not exceeding $25.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-4-4305. Power to grant pardons. The mayor has power to grant pardons and remit fines and forfeitures for offenses against city or town ordinances when in the mayor's judgment public justice would be thereby subserved. The mayor must report all pardons granted, with the reasons therefor, to the next council.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(15).

7-4-4306. Extraterritorial powers. The mayor has power to exercise such power as may be vested in the mayor by ordinance of the city or town, in and over all places within 5 miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(17).

Part 44

Office of Alderman

7-4-4401. Qualifications for alderman. No person is eligible for the office of alderman unless he is a resident for at least 60 days preceding the election to office of the ward electing him or of an area which has been annexed by the city or town and placed in the ward.

History: En. Sec. 366, 5th Div. Comp. Stat. 1887; amd. Sec. 4753, Pol. C. 1895; re-en. Sec. 3229, Rev. C. 1907; re-en. Sec. 5008, R.C.M. 1921; re-en. Sec. 5008, R.C.M. 1935; amd. Sec. 3, Ch. 76, L. 1961; amd. Sec. 1, Ch. 144, L. 1967; R.C.M. 1947, 11-714; amd. Sec. 3, Ch. 420, L. 1979; amd. Sec. 28, Ch. 443, L. 1979.

7-4-4402. Term of office. (1) Except as provided in subsection (2), an alderman shall hold office for a term of 4 years and until the qualification of his successor.

(2) At the first annual election held after the organization of a city or town under this title, the electors of the city or town must elect two aldermen from each ward, who must, at the first meeting of the council, decide by lot their terms of office, with one from each ward to hold for a term of 4 years and one, for a term of 2 years and until the qualification of their successors. In the succeeding election and thereafter, one alderman from each ward will be elected for a 4-year term.

History: Ap. p. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; Sec. 11-709, R.C.M. 1947; Ap. p. Sec. 4750, Pol. C. 1895; re-en. Sec. 3226, Rev. C. 1907; re-en. Sec. 5005, R.C.M. 1921; re-en. Sec. 5005, R.C.M. 1935; Sec. 11-711, R.C.M. 1947; R.C.M. 1947, 11-709(part), 11-711; amd. Sec. 29, Ch. 443, L. 1979.

7-4-4403. Officers of city or town council. The council may elect a president, who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor. In the absence of the president, the council may appoint one of its number to act in his place.

History: En. Sec. 4783, Pol. C. 1895; re-en. Sec. 3252, Rev. C. 1907; re-en. Sec. 5032, R.C.M. 1921; re-en. Sec. 5032, R.C.M. 1935; R.C.M. 1947, 11-804.

Part 45

Office of Municipal Clerk

7-4-4501. Duties of city clerk related to administration. It is the duty of the clerk to:

(1) attend all meetings of the council and record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into;

(2) enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council;

(3) countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council;

(4) sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council;

(5) take and administer oaths, but must not charge or receive any fees therefor;

(6) perform such other and further duties as the council may prescribe.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-4-4502. Duties of city clerk related to city records and papers. It is the duty of the clerk to:

(1) file and keep all records, books, papers, or property belonging to the city or town and deliver the same to his successor when qualified;

(2) make and certify copies of all records, books, and papers in his possession on the payment of like fees as are allowed county clerks, which fees must be paid into the city treasury;

(3) make and keep a complete index of the journal, ordinance book, finance book, and all other books and papers on file in his office.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-4-4503. City ordinance book. The book required by 7-4-4501(2) is called "The Ordinance Book".

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-4-4504 through 7-4-4510 reserved.

7-4-4511. Duties of town clerk related to administration. It shall be the duty of the town clerk to:

(1) attend all meetings of the council and record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into;

(2) enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council;

(3) countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council;

(4) sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

7-4-4512. Duties of town clerk related to town records and papers. It shall be the duty of the town clerk to file and keep all records, books, papers, or property belonging to the town and to deliver the same to his successor when qualified.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

7-4-4513. Town ordinance book. The book required by 7-4-4511(2) is called "The Ordinance Book".

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

Part 46

Office of City Attorney

7-4-4601. Qualifications for city attorney. To be appointed, the city attorney shall be a person who has been licensed to practice as an attorney in this state.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part).

7-4-4602. Appointment — term of office. (1) The city attorney must be appointed by the mayor, subject to approval by the city council.

(2) The city attorney shall hold his office for 2 years unless suspended or removed as provided by law.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 2, Ch. 428, L. 1979.

7-4-4603. Removal or suspension. The city attorney may be suspended or removed from office by the city council for the neglect, violation, or disregard of the duties required by law or the ordinances of the city.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part).

7-4-4604. Duties. It shall be the duty of the city attorney to attend before the city court and other courts of the city and the district court and prosecute on behalf of the city. He shall, when required, draw, for the use of the council, contracts and ordinances for the government of the city and, when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities, and powers of the corporation. He shall perform such other duties as pertain to the functions of the city council or as the city council may prescribe by resolution.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 3, Ch. 428, L. 1979.

7-4-4605. Employment of special or additional counsel. Nothing in this part shall be taken or construed as preventing the city council from employing in special cases on a contract basis:

(1) the city attorney to perform services not specifically provided for under 7-4-4604; or

(2) additional or other counsel.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 4, Ch. 428, L. 1979.

7-4-4606. Legal services for city of third class. A third class city may retain the county attorney to provide legal services for the city in cases not involving a conflict between the interests of the city and the county, either by an interlocal cooperation agreement or by mutual consent by the governing bodies of the city and county.

History: En. Sec. 4741, Pol. C. 1895; re-en. Sec. 3217, Rev. C. 1907; re-en. Sec. 4996, R.C.M. 1921; re-en. Sec. 4996, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1975; R.C.M. 1947, 11-702(part).

Part 47

Office of City Treasurer

7-4-4701. Term of office for city treasurer. In cities of the first, second, and third classes, a city treasurer shall hold office for a term of 4 years and until the qualification of his successor.

History: En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part).

CHAPTER 5

GENERAL OPERATION AND CONDUCT OF BUSINESS

Part 1 — Local Government Ordinances, Resolutions, and Initiatives and Referendum

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7-5-104. Emergency ordinance.
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7-5-201. Operation of self-government consolidated units of local government.

Part 3 — Local Government Elections

(Repealed. Sec. 407, Ch. 571, L. 1979.)

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Part 21 — Conduct of County Government

7-5-2101. General authority of county commissioners.
7-5-2102. Promulgation and enforcement of rules.
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7-5-2125. Open meetings.
7-5-2126. Attendance at board meetings by sheriff.
7-5-2127. Subpoena power of county commissioners.
7-5-2128. Fees of officers and witnesses.
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7-5-2132. Destruction of old county records.
Sections 7-5-2133 through 7-5-2140 reserved.
7-5-2141. Membership in associations of counties.
7-5-2142. Membership in associations of clerk and recorders.
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Part 22 — County Resolutions

7-5-2201. Effective date of resolutions.
7-5-2202. Details relating to emergency measures.
Sections 7-5-2203 through 7-5-2210 reserved.
7-5-2211 through 7-5-2222. Repealed. Sec. 407, Ch. 571, L. 1979.

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7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts.
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7-5-4109. Control of conflict of interest.
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Sections 7-5-4113 through 7-5-4120 reserved.
7-5-4121. Conduct of council business.
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Part 42 — Municipal Ordinances and Resolutions

7-5-4201. Municipal ordinances.
7-5-4202. Incorporation of technical codes by reference.
7-5-4203. Effective date of ordinances and resolutions.
7-5-4204. Details relating to emergency measures.
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Sections 7-5-4209 and 7-5-4210 reserved.
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Part 43 — Municipal Contracts and Franchises

7-5-4301. Power to enter and execute contracts.
7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts.
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7-5-4304. Certain contracts to be submitted to voters.
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7-5-4306. Use of installment purchase contract.
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7-5-4308. Procedure to modify contract.
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7-5-4321. Grant of exclusive franchise — election required.
7-5-4322. Election on question of granting franchise.

Part 44 — Municipal Elections

7-5-4401. Division of municipalities into wards.
7-5-4402 through 7-5-4409. Repealed. Sec. 407, Ch. 571, L. 1979.

Part 1

Local Government Ordinances, Resolutions, and Initiatives and Referendum

7-5-101. Definition. As used in this part, "chief executive" means the elected executive in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

History: **En. 47A-3-101 by Sec. 13, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-101.**

7-5-102. Construction of certain sections. Sections 7-5-103 through 7-5-107 merely provide a procedure for the adoption of ordinances and shall not be construed as granting authority to adopt ordinances.

History: **En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(10).**

7-5-103. Ordinance requirements. (1) All ordinances shall be submitted in writing in the form prescribed by resolution of the governing body.

(2) No ordinance passed shall contain more than one comprehensive subject, which shall be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies made available to the public.

(4) After passage and approval, all ordinances shall be signed by the chairman of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

History: **En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(1) thru (3), (5).**

7-5-104. Emergency ordinance. In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

History: **En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(4).**

7-5-105. Effective date of ordinance. No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

History: **En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(6).**

7-5-106. Ordinance veto procedure. If the plan of government allows the chief executive to veto an ordinance, this power must be exercised in writing prior to the next regularly scheduled meeting of the governing body. Whenever the chief executive vetoes an ordinance, the governing body must act at the next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the executive fails to act, the ordinance shall take effect.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(7).

7-5-107. Register of ordinances and codification. (1) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval, except when a code is adopted by reference. When a code is adopted by reference, the date and source of the code shall be entered.

(2) (a) No later than 1980 and at 5-year intervals thereafter, appropriate ordinances shall be compiled into a uniform code and published.

(b) The recodification is not effective until approved by the governing body.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(8), (9).

7-5-108. Adoption and amendment of codes by reference. (1) Any local government may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after first reading and prior to final adoption of the code. At least one copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and kept there, available for public use, inspection, and examination. The filing requirements prescribed in this section shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk of the governing body for a period of 30 days prior to final adoption of the ordinance which incorporates the code, portion, or amendment by reference.

(2) The governing body may adopt or amend a code by reference by an emergency ordinance and without notice. The emergency ordinance is automatically repealed 90 days following its adoption and cannot be reenacted as an emergency ordinance.

(3) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.

(4) The filing requirement of subsection (1) shall be complied with in adopting amendments to codes.

(5) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment or any provision thereof separately, and no part of any penalty shall be incorporated by reference.

(6) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof and shall include specifically but shall not be limited to: traffic codes, building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, and inflammable liquids codes, together with any other

code which embraces rules pertinent to a subject which is a proper local government legislative matter.

History: **En. 47A-3-103 by Sec. 6, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-103.**

7-5-109. Penalty for violation of ordinance. A local government may fix penalties for the violation of an ordinance which do not exceed a fine of $500 or 6 months' imprisonment or both the fine and imprisonment.

History: **En. 47A-3-104 by Sec. 7, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-104.**

7-5-110 through 7-5-120 reserved.

7-5-121. Resolution requirements. (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may be submitted and adopted at a single meeting of the governing body.

(3) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

History: **En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(1), (2), (4).**

7-5-122. Resolution veto procedure. If the plan of government allows the chief executive to veto resolutions, this power must be exercised in writing at the next regular meeting. If the chief executive fails to act, the resolution is approved. If the chief executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

History: **En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(3); amd. Sec. 1, Ch. 311, L. 1979.**

7-5-123. Effective date of resolutions. All resolutions shall be immediately effective unless a delayed effective date is specified.

History: **En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(5).**

7-5-124 through 7-5-130 reserved.

7-5-131. Right of initiative and referendum. (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2), may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-137.

(2) The powers of initiative shall not extend to the following:

(a) the annual budget;

(b) bond proceedings, except for ordinances authorizing bonds;

(c) the establishment and collection of charges pledged for the payment of principal and interest on bonds; or

(d) the levy of special assessments pledged for the payment of principal and interest on bonds.

History: **En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(1), (2).**

7-5-132. Procedure to exercise right of initiative or referendum. (1) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If submitted prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(2) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(3) A petition or resolution for initiative or referendum shall:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part; and

(d) contain the signatures of 15% of the registered electors of the local government.

History: **En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(3) thru (5); amd. Sec. 299, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-5-133. Processing of petition. (1) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(2) If the governing body does not within 60 days take the proposed action, then the question shall be submitted to the electors at the next school, primary, or general election or a special election called for that purpose.

History: **En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part).**

7-5-134. Signatures — submission for approval — statement of purpose and implication. (1) In order to determine the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors shall be the number of individuals registered to vote at the preceding general election for the local government.

(2) Before a petition may be circulated for signatures, a sample petition must be submitted in the form in which it will be circulated to the county election administrator for approval as to form. The election administrator shall review the sample petition to ensure compliance with 7-5-131 and 7-5-132.

(3) The county election administrator shall refer a copy of the sample petition sheet to the attorney for the local government unit for preparation of the ballot statement. The local government attorney shall prepare a concise ballot statement not exceeding 100 words. This statement must be an accurate and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not be an argument and may not be written so as to create prejudice for or against the

issue. The statement prepared pursuant to this subsection, unless altered by court order, must be used as the petition title and the ballot statement if the issue is placed on the ballot.

(4) At the time the statement of purpose is prepared, the attorney shall prepare a statement of the implication of a vote for and a statement of the implication of a vote against the ballot issue. Each statement of implication may be no more than 25 words and must be in simple, impartial language that clearly explains the meaning of a vote for or a vote against the issue. Each statement of implication prepared pursuant to this section, unless altered by a court order, is to be used on the petition and the ballot if the issue is placed on the ballot. The statements of implication must be placed beside the diagram provided for marking of the ballot in a manner similar to the following example:

☐ FOR weekly commission meetings.

☐ AGAINST weekly commission meetings.

(5) If the petition is rejected as to form, the election administrator must send written notice to the person who submitted the sample petition within 10 days after submission of the sample.

(6) If the petition is approved as to form, the election administrator shall send written notice to the person who submitted the sample petition within 21 days after submission of the sample. This notice must include the ballot statement and the statements of implication prepared by the local government attorney.

(7) All petition signatures must be collected and filed within 90 days of the date of the notice that the petition has been approved as to form.

History: (1)En. 47A-3-107 by Sec. 10, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-107; (2)—(7)En. Secs. 1, 2, Ch. 69, L. 1981.

Compiler's Comments

Codification Instruction: Section 3, Ch. 69, L. 1981, provided: "Sections 1 and 2 [7-5-134(2) through (7)] are intended to be codified as an integral part of Title 7, chapter 5, part 1, and the provisions of 7-5-131 through 7-5-137 apply to sections 1 and 2."

7-5-135. Suit to determine validity and constitutionality of petition and proposed action. (1) Before submitting the question to the electors, the governing body may direct that a suit be brought in district court by the local government to determine whether the petition is regular in form and has sufficient signatures and whether the proposed action would be valid and constitutional.

(2) The complaint shall name as defendants not less than 10 or more than 20 of the petitioners. In addition to the names of the defendants, to the caption of the complaint there shall be added the words: "And all petitioners whose names appear on the petition for an ordinance filed on the ... day of ....., in the year ...", stating the date of filing. The summons shall be similarly directed and shall be served on the defendants named therein and in addition shall be published.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part).

7-5-136. Submission of question to electors. (1) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(b) the governing body calls for a special election on the question.

(2) A special election may not be held sooner than 60 days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.

(3) If the adequacy of the petition is determined by the election administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election unless a special election is called.

(4) Whenever a measure is ready for submission to the electors, the appropriate election administrator shall in writing notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed shall be published.

(5) The question shall be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.

(6) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared unless otherwise stated in the proposal.

History: **En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(7); amd. Sec. 300, Ch. 571, L. 1979.**

7-5-137. Effect of repeal or enactment of ordinance by initiative or referendum. If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative at any time to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

History: **En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(6)(d).**

Part 2

Operation of Consolidated Units of Local Government

7-5-201. Operation of self-government consolidated units of local government. (1) Whenever existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision of services, the governing body of a self-government consolidated unit of local government which contains at least one county and one municipality shall by ordinance adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those areas where such units are subject to state law under 7-1-111 through 7-1-114.

(2) A combination of county and municipal offices in a self-government consolidated unit may be accomplished by ordinance whenever such a combination is necessary for carrying out a duty assigned by state law to the local government. Whenever state law imposes a duty upon a specific official or employee of a self-government consolidated unit of local government and the local government under its adopted alternative form of government does not have such an official or employee, the governing body may by ordinance assign that duty to the appropriate official or employee of the local government. The governing body of any self-government consolidated unit of local government may by ordinance assign responsibility to carry out any function or provide any service required by state law to one or more departments, officers, or employees of the local government notwithstanding the fact that the state law may assign the function or service to a specific office.

History: En. 47A-3-108 by Sec. 11, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-108.

Part 3

Local Government Elections (Repealed. Sec. 407, Ch. 571, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

7-5-301. En. 47A-3-301 by Sec. 1, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-301.

7-5-302. En. 47A-3-302 by Sec. 2, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-302; amd. Sec. 1, Ch. 359, L. 1979.

7-5-303. En. 47A-3-303 by Sec. 3, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-303.

7-5-311. En. Sec. 11, Ch. 368, L. 1969; R.C.M. 1947, 23-2801.

Parts 4 through 20 reserved

Part 21

Conduct of County Government

7-5-2101. General authority of county commissioners. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.

(2) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to

the full discharge of the duties of the chief executive authority of the county government.

History: (1)En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; Sec. 16-1024, R.C.M. 1947; (2)En. Subd. 25, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.24, R.C.M. 1935; Sec. 16-1027, R.C.M. 1947; R.C.M. 1947, 16-1024(part), 16-1027.

7-5-2102. Promulgation and enforcement of rules. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to make and enforce such rules for its government, the preservation of order, and the transaction of business as may be necessary.

History: En. Subd. 23, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.22, R.C.M. 1935; R.C.M. 1947, 16-1025.

7-5-2103. Division of county into districts. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to divide the counties into township, school, road, and other districts required by law; change the same; and create others as convenience requires by consolidation of two or more townships or otherwise.

History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.1, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1951; R.C.M. 1947, 16-1002(part).

7-5-2104. Direction of lawsuits. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to direct and control the prosecution and defense of all suits to which the county is a party.

History: En. Subd. 15, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.14, R.C.M. 1935; R.C.M. 1947, 16-1017.

7-5-2105. Authority to contract for printing and supplies. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to contract for the county printing and to provide books and stationery for county officers.

History: En. Subd. 20, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.19, R.C.M. 1935; R.C.M. 1947, 16-1022.

7-5-2106. Control of conflict of interest. No member of the board must be directly or indirectly interested:

(1) in any property purchased for the use of the county;

(2) in any purchase or sale of property belonging to the county; or

(3) in any contract made by the board or other person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

History: En. Sec. 4292, Pol. C. 1895; re-en. Sec. 2951, Rev. C. 1907; re-en. Sec. 4606, R.C.M. 1921; Cal. Pol. C. Sec. 4077; re-en. Sec. 4606, R.C.M. 1935; R.C.M. 1947, 16-1804.

7-5-2107. Employment of personnel by county commissioners. The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary, and responsibilities of such persons. Such persons may be paid monthly, twice monthly, or every 2 weeks.

History: En. Sec. 1, Ch. 309, L. 1973; R.C.M. 1947, 16-913; amd. Sec. 2, Ch. 109, L. 1979.

7-5-2108. County work week. All full-time salaried county employees shall work a minimum of 40 hours per week.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part).

7-5-2109 through 7-5-2120 reserved.

7-5-2121. Administration of oaths. Any member of the board of county commissioners may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907; re-en. Sec. 4456, R.C.M. 1921; Cal. Pol. C. Sec. 4028; re-en. Sec. 4456, R.C.M. 1935; R.C.M. 1947, 16-905(part).

7-5-2122. Meetings of board of county commissioners. (1) The governing body of the county shall establish by resolution a regular meeting date and notify the public of that date.

(2) The governing body of the county, except as may be otherwise required of them, may meet at the county seat of their respective counties at any time for the purpose of attending to county business. Commissioners may, by resolution and prior 2 days' posted public notice, designate another meeting time and place.

History: En. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R.C.M. 1921; Cal. Pol. C. Sec. 4032; amd. Sec. 1, Ch. 35, L. 1929; re-en. Sec. 4462, R.C.M. 1935; amd. Sec. 1, Ch. 132, L. 1959; amd. Sec. 5, Ch. 391, L. 1973; amd. Sec. 1, Ch. 27, L. 1975; R.C.M. 1947, 16-910.

7-5-2123. Publication of board proceedings and annual financial statement. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause to be published in a newspaper:

(a) at the adjournment of each session of the board, a complete list of all claims ordered paid for all purposes, showing the name, purpose, and amount, and a fair summary of the minutes and records of all of its proceedings;

(b) annually, the county clerk's annual statement of the financial condition of the county.

(2) Publication of such minutes and records of proceedings must be made within 21 days after the adjournment of the session. Publication of the financial statement must be made within 30 days after the presentation of the same to the board. The board shall not allow or order paid any claim for any such publication of minutes and records of proceedings or annual financial statement unless made within the time herein prescribed therefor.

History: En. Subd. 21, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.20, R.C.M. 1935; R.C.M. 1947, 16-1023.

7-5-2124. Repealed. Sec. 15, Ch. 311, L. 1979.

History: En. Sec. 4232, Pol. C. 1895; re-en. Sec. 2896, Rev. C. 1907; re-en. Sec. 4469, R.C.M. 1921; Cal. Pol. C. Sec. 4047; re-en. Sec. 4469, R.C.M. 1935; R.C.M. 1947, 16-1103(part).

7-5-2125. Open meetings. All meetings of the board of county commissioners must be public.

History: En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907; re-en. Sec. 4458, R.C.M 1921; Cal. Pol. C. Sec. 4035; re-en. Sec. 4458, R.C.M. 1935; R.C.M 1947, 16-906(part).

7-5-2126. Attendance at board meetings by sheriff. The board of county commissioners has the power to direct the sheriff to attend, in person or by deputy, all the meetings of the board; to preserve order; and to serve notices or citations as directed by the board.

History: En. Sec. 4232, Pol. C. 1895; re-en. Sec. 2896, Rev. C. 1907; re-en. Sec. 4469, R.C.M. 1921; Cal. Pol. C. Sec. 4047; re-en. Sec. 4469, R.C.M. 1935; R.C.M. 1947, 16-1103(part).

7-5-2127. Subpoena power of county commissioners. (1) The board may, by its chairman or the chairman of any committee, issue subpoenas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within its jurisdiction.

(2) When served, a witness is bound to attend and to answer all questions which he would be bound to answer before any court. Disobedience to the subpoena or to an order to attend or to testify may be enforced by the board, and for that purpose, the board has all the powers conferred by and the witness is subject to all the provisions of Title 26, chapter 2, parts 1 and 2; 26-2-303; and Rule 45(c), M.R.Civ.P.

History: (1)En. Sec. 4282, Pol. C. 1895; re-en. Sec. 2941, Rev. C. 1907; re-en. Sec. 4517, R.C.M. 1921, Cal. Pol. C. Sec. 4067; re-en. Sec. 4517, R.C.M. 1935; Sec. 16-1158, R.C.M. 1947; (2)En. Sec. 4283, Pol. C. 1895; re-en. Sec. 2942, Rev. C. 1907; re-en. Sec. 4518, R.C.M. 1921; Cal. Pol. C. Sec. 4068; re-en. Sec. 4518, R.C.M. 1935; Sec. 16-1159, R.C.M. 1947; R.C.M. 1947, 16-1158, 16-1159.

7-5-2128. Fees of officers and witnesses. Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of county commissioners are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend without their fees being prepaid. The board must allow the witnesses reasonable compensation for their attendance, but in no case to exceed the amount for like services in courts.

History: En. Sec. 4284, Pol. C. 1895; re-en. Sec. 2943, Rev. C. 1907; re-en. Sec. 4519, R.C.M. 1921; Cal. Pol. C. Sec. 4069; re-en. Sec. 4519, R.C.M. 1935; R.C.M. 1947, 16-1160.

7-5-2129. Certain records to be kept by board. The board of county commissioners must cause to be kept:

(1) a "Minute Book" in which must be recorded all orders and decisions made by them and the daily proceedings had at all regular and special meetings;

(2) a "Road Book" containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads and road districts or relating to road supervisors and their reports and accounts;

(3) a "Franchise Book" containing all franchises granted by them, for what purpose, the length of time and to whom granted, and the amount of bond and license tax required;

(4) a "Warrant Book" in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book and with the date, amount, on what account, and name of payee.

History: En. Sec. 4219, Pol. C. 1895; re-en. Sec. 2890, Rev. C. 1907; re-en. Sec. 4461, R.C.M. 1921; Cal. Pol. C. Sec. 4031; re-en. Sec. 4461, R.C.M. 1935; R.C.M. 1947, 16-909.

7-5-2130. Records to be signed. The records must be signed by the chairman and the clerk.

History: En. Sec. 4217, Pol. C. 1895; re-en. Sec. 2888, Rev. C. 1907; re-en. Sec. 4459, R.C.M. 1921; Cal. Pol. C. Sec. 4029; re-en. Sec. 4459, R.C.M. 1935; R.C.M. 1947, 16-907(part).

7-5-2131. Records to be available to public. The books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection free of charge.

History: En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907; re-en. Sec. 4458, R.C.M 1921; Cal. Pol. C. Sec. 4035; re-en. Sec. 4458, R.C.M. 1935; R.C.M 1947, 16-906(part).

7-5-2132. Destruction of old county records. (1) Upon the order of the board of county commissioners and with the approval of the department of administration, a county officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records.

(2) Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any county officer after a period of 25 years.

History: (1)En. Sec. 2, Ch. 92, L. 1935; re-en. Sec. 455.2, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974; amd. Sec. 36, Ch. 213, L. 1975; Sec. 59-514, R.C.M. 1947; (2)En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; Sec. 59-516, R.C.M. 1947; R.C.M. 1947, 59-514(1), 59-516(part); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-5-2132 . . . are transferred to the department of administration."

7-5-2133 through 7-5-2140 reserved.

7-5-2141. Membership in associations of counties. The boards of county commissioners of the several counties of Montana are hereby authorized and empowered to:

(1) take out county membership in and cooperate with associations and organizations of other counties or county officials of this state and of other states for the furtherance of good government and the protection of county interests; and

(2) pay for such membership in such associations or organizations with county funds.

History: En. Sec. 1, Ch. 104, L. 1947; R.C.M. 1947, 16-1034.

7-5-2142. Membership in associations of clerk and recorders. (1) The county clerk and recorders of the counties of Montana are hereby authorized and empowered to take out county membership in and to cooperate with associations and organizations of county clerk and recorders of this state and of other states for the furtherance of good government and the protection of county interests.

(2) All county clerk and recorders of the various counties throughout the state shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of county clerk and recorders held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: **Ap. p. Sec. 1, Ch. 84, L. 1963; Sec. 16-2926, R.C.M. 1947; Ap. p. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-2926, 25-508(4).**

7-5-2143. Membership in associations of clerks of district courts. (1) The county clerks of the district courts of the counties of Montana are hereby authorized and empowered to take out county membership in and to cooperate with associations and organizations of county clerks of the district courts of this state and of other states for the furtherance of good government and the protection of county interests.

(2) All county clerks of the district court of the various counties throughout the state shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of clerks of court held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: **Ap. p. Sec. 1, Ch. 64, L. 1967; Sec. 16-3006, R.C.M. 1947; Ap. p. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-3006, 25-508(5).**

7-5-2144. Membership in associations of county treasurers. (1) County treasurers are authorized and empowered to take out county membership in and to cooperate with associations and organizations of county treasurers of this state for the furtherance of good government and the protection of county interests. Payment for membership in such associations or organizations shall be made from county funds in such amount as shall be approved by the board of county commissioners.

(2) All county treasurers of the various counties throughout the state shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of county treasurers held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: **(1)En. Sec. 1, Ch. 114, L. 1973; Sec. 16-2627, R.C.M. 1947; (2)En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927;**

amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-2627, 25-508(6).

7-5-2145. Attendance at meetings and conventions by county officers and employees. (1) Unless otherwise provided by law, no county officer or employee may receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance at such convention, meeting, or other gathering as the officer or employee may by virtue of his office find it necessary to attend.

(2) Three members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance at any general meeting of county commissioners or assessors held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall also be paid.

(3) County attorneys, sheriffs, and justices of the peace may attend their respective meetings or conventions held within the state and are allowed actual traveling expenses, not more often than once a year, for attending the same.

(4) Any county officer paid on a per-day basis for his performance of official duties is allowed his per-day rate of pay for attendance at any convention, meeting, or other gathering of public officers that the officer may by virtue of his office find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 2, Ch. 311, L. 1979; amd. Sec. 1, Ch. 384, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (4).

Part 22

County Resolutions

7-5-2201. Effective date of resolutions. No resolution passed by the board of county commissioners shall become effective until 30 days after its passage except:

(1) general appropriation resolutions providing for the ordinary and current expenses of the county; and

(2) emergency measures.

History: En. Sec. 3, Ch. 64, L. 1973; R.C.M. 1947, 37-303(part).

7-5-2202. Details relating to emergency measures. In the case of emergency measures, the emergency must be expressed in the preamble or in the body of the measure and the measure must receive a two-thirds vote of all the members of the board. Emergency resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety.

History: **En. Sec. 3, Ch. 64, L. 1973; R.C.M. 1947, 37-303(part).**

7-5-2203 through 7-5-2210 reserved.

7-5-2211 through 7-5-2222. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-5-2211. En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(part).

7-5-2212. En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(part).

7-5-2213. En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(part).

7-5-2214. En. Sec. 1, Ch. 64, L. 1973; amd. Sec. 1, Ch. 389, L. 1975; R.C.M. 1947, 37-301(3).

7-5-2215. En. Secs. 4, 10, Ch. 64, L. 1973; R.C.M. 1947, 37-304, 37-310.

7-5-2216. En. Sec. 11, Ch. 64, L. 1973; R.C.M. 1947, 37-311.

7-5-2217. En. Secs. 2, 5, 6, Ch. 64, L. 1973; R.C.M. 1947, 37-302, 37-305, 37-306.

7-5-2218. En. Sec. 7, Ch. 64, L. 1973; R.C.M 1947, 37-307.

7-5-2219. En. Sec. 8, Ch. 64, L. 1973; R.C.M. 1947, 37-308(part).

7-5-2220. En. Sec. 9, Ch. 64, L. 1973; R.C.M. 1947, 37-309.

7-5-2221. En. Sec. 8, Ch. 64, L. 1973; R.C.M. 1947, 37-308(part).

7-5-2222. En. Sec. 8, Ch. 64, L. 1973; R.C.M. 1947, 37-308(part).

Part 23

County Contracts

7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304, no contract for the purchase of any vehicle, road machinery, or other machinery, apparatus, appliances, or equipment or for any materials or supplies of any kind for which must be paid a sum in excess of $10,000 or for the construction of any building, road, or bridge for which must be paid a sum in excess of $10,000 or for the repair or maintenance of any building, road, or bridge for which must be paid a sum in excess of $25,000 shall be entered into by a county governing body without first publishing a notice calling for bids for furnishing the same.

(2) The notice must be published in the official newspaper of the county at least once a week for 3 consecutive weeks before the date fixed therein for receiving bids.

(3) Every such contract shall be let to the lowest and best responsible bidder.

History: **En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part); amd. Sec. 1, Ch. 134, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "or for the repair or maintenance of any building, road, or bridge for which must be paid a sum in excess of $25,000" before "shall be entered into by a county governing body" near the end of (1).

7-5-2302. Use of competitive, nonadvertised bidding for certain purchases. (1) Except as provided in 7-5-2303, on any purchase contract entered into by a county governing body for the purchase of any vehicle, machinery, appliances, apparatus, building, or materials and supplies for which must be paid a sum in excess of $10,000 but less than $25,000, bids shall be solicited without advertising from persons, firms, or corporations who have caused to be filed with the governing body of the county a request in writing that its name be listed with the governing body for solicitations on the particular items set forth in the request. The governing body shall solicit bids of prospective suppliers whose names are listed as provided herein, which solicitation shall contain the same information as is required to be set forth in advertisements. If a person, firm, or corporation whose name is listed fails for a period of 1 year to respond to any solicitation for bids, such listing may be canceled.

(2) The governing body of the county shall let such contract to the lowest and best responsible bidder.

(3) Compliance with the provisions of this section shall be considered as meeting the requirements of 7-5-2301.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part); amd. Sec. 2, Ch. 134, L. 1981.

Compiler's Comments

1981 Amendment: In (1), increased the range for bid contracting from between $4,000 and $10,000 to between $10,000 and $25,000.

7-5-2303. Use of public auction to make purchase. (1) In lieu of soliciting bids, the governing body may purchase at public auction any vehicle, machinery, appliances, apparatus, building, or materials and supplies for which must be paid a sum less than $25,000.

(2) Compliance with the provisions of this section shall be considered as meeting the requirements of 7-5-2301.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part); amd. Sec. 3, Ch. 134, L. 1981.

Compiler's Comments

1981 Amendment: Increased auction limit in (1) from $10,000 to $25,000.

7-5-2304. Exemptions from competitive bidding requirements. The provisions of 7-5-2301 and 7-5-2302 shall not apply to contracts for:

(1) public printing entered into in accordance with the provisions of part 24; and

(2) purchases which, in the opinion of the governing body, are made necessary by fire, flood, explosion, storm, earthquake, other elements, epidemic, riot or insurrection, or for the immediate preservation of order or the public health or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, or mischief or for the relief of a stricken community overtaken by calamity.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part).

7-5-2305. Prohibition on division of contracts to circumvent bidding requirements. Whenever any law of this state provides a limitation upon the amount of money that a county can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a county shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder, which by its nature or character is integral to such public work or construction project or serves to accomplish one of the basic purposes or functions thereof, into several contracts or separate work orders or by any similar device.

History: **En. Sec. 1, Ch. 153, L. 1971; R.C.M. 1947, 16-1803.1.**

7-5-2306. Use of installment purchase contracts. When the amount to be paid as the purchase price for any vehicle or road machinery of any kind, for any other machinery, apparatus, appliance, or equipment, or for any materials or supplies of any kind shall exceed $4,000, the county governing body may provide for the payment of such purchase price in installments extending over a period of not more than 5 years, provided that at the time of entering into the agreement for such purchase, there shall be an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of such portion of the purchase price as is payable during the then-current fiscal year and the budget for each following year in which any portion of such purchase price is to be paid shall contain an appropriation for the purpose of paying the same.

History: **En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(2).**

7-5-2307. Treatment of rental-purchase contracts. Every contract entered into for the rental of machinery, equipment, apparatus, appliances, materials, or supplies of any kind which shall provide for payment of rental by the county and that, after a certain fixed amount has been paid as rental, the property shall become the property of the county or any other similar provisions or conditions shall be deemed and construed to be a contract for sale of such property, and all of the provisions of this part shall apply thereto and govern and control the same.

History: **En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(3).**

7-5-2308. Department of administration as purchasing agent. The department of administration may serve as a purchasing agent for the county governing body by mutual consent of both parties.

History: **En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(5).**

Part 24

County Printing

7-5-2401. Purpose of part. The purpose of this part is to require the board of county printing to set maximum prices which may be charged for county printing and legal advertising.

History: En. Sec. 2, Ch. 280, L. 1967; amd. Sec. 57, Ch. 348, L. 1974; R.C.M. 1947, 16-1226.

7-5-2402. Definition. Unless the context requires otherwise, in this part "board" means the board of county printing provided for in 2-15-1811.

History: En. 16-1226.1 by Sec. 58, Ch. 348, L. 1974; R.C.M. 1947, 16-1226.1; amd. Sec. 4, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Changed internal reference to the board.

7-5-2403. Meetings of board of county printing. The board shall meet annually.

History: En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(1).

7-5-2404. Establishment of maximum prices. (1) The board shall adopt and publish a schedule of maximum prices to be charged for county printing and legal advertising. The prices shall be the full prices to be charged and shall include the paper stock specified, completion of all printing and other work, and delivery to the county courthouse.

(2) The board shall conduct hearings when required to determine maximum rates for county printing. Notice of intention to hold a hearing shall be published at least 30 days before the date set for the hearing in a newspaper published in Helena, and a copy shall be mailed to each board of county commissioners.

(3) The board shall deliver, free of charge, to each board of county commissioners in this state a copy of every schedule of maximum prices adopted by the board within 30 days of its publication, together with a notice of the date fixed by the board when the prices will be effective.

History: En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(2), (4), (5).

7-5-2405. Adoption of printing standards. The board shall adopt necessary standards for sizes, weights, and grades of paper stock, which shall conform to the uniform scale of sizes, weights, and grades used by paper manufacturers, and for sizes and types of printing, ruling, and binding, which shall conform as nearly as possible to the ordinary standards in use in the printing industry. For this purpose, reference may be made to established standards or publications used in this state, and the board may provide for the adoption of a standard list for those items not covered by the prices, regulations, or standards published by the board.

History: En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(3).

7-5-2406 through 7-5-2410 reserved.

7-5-2411. County printing contract. (1) Except as provided in subsection (2), the county commissioners shall contract with one newspaper to do all the printing for the county, including advertising required by law and all printed forms required by the county, at a rate not exceeding that set by the board. The newspaper shall be one that is published in the county and of general bona fide and paid circulation with the second-class mailing privilege and has been published continuously as such at least once a week in the county for the 12 months preceding the awarding of the contract.

(2) (a) In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall and in counties of the first class, the county commissioners may separate the printing contract into two parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified newspaper, and the other contract shall provide for all printed forms, materials, and supplies required by the county. This contract or one separated under subsection (2)(b) shall be let to a commercial printing establishment or establishments, as the case may be, which shall have been in business in the county for at least 1 year.

(b) The board of county commissioners for counties of the first class may award separate contracts for printed forms, materials, and supplies required by the counties. The separate contracts may be awarded on an annual basis or may be awarded for a specific printing job.

(3) In no case shall any contract call for payment by the county of any prices in excess of the maximum fixed by the board of county printing.

(4) Nothing in this part shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this part or to let contracts at prices less than the maximum fixed by the board of county printing.

History: En. Sec. 6, Ch. 280, L. 1967; amd. Sec. 1, Ch. 418, L. 1973; amd. Sec. 61, Ch. 348, L. 1974; R.C.M. 1947, 16-1230; amd. Sec. 3, Ch. 364, L. 1979; amd. Sec. 1, Ch. 70, L. 1981; amd. Sec. 1, Ch. 393, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 70 inserted "or one separated under subsection (2)(b)" at the beginning of the last sentence in (2)(a); added subsection (2)(b); and made minor changes in phraseology.

Chapter 393 substituted the second sentence in subsection (1) for "The newspaper shall be: (a) of general circulation; (b) published at least once a week; (c) published in the county; (d) published continuously in the county for the 12 months preceding the awarding of the contract."

Effective Date: Sec. 4, Ch. 364, L. 1979, provided: "This act is effective on passage and approval." Approved March 28, 1979.

7-5-2412. Details relating to printing contract. (1) The contract shall be let to the printing establishment that in the judgment of the county commissioners shall be most suitable for performing said work. The county commissioners shall require of any contractor to do such county printing a good and sufficient deposit in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties and conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this part and the terms of such contract.

(2) Nothing in this part shall be construed so as to compel the acceptance of unsatisfactory work.

(3) Such contract for printing shall extend for a period of not more than 2 years. All printing establishments which may receive any contract for printing under this part and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some printing establishment within the county if such is available and, if not, within the state, which shall do the work under the contract so sublet entirely within the state with Montana labor.

History: En. Sec. 7, Ch. 280, L. 1967; amd. Sec. 2, Ch. 418, L. 1973; R.C.M. 1947, 16-1231(part).

7-5-2413. Competitive bids required. The board of county commissioners shall call for competitive bids from persons or firms qualified to bid on county printing under the terms of this part.

History: En. Sec. 8, Ch. 280, L. 1967; amd. Sec. 3, Ch. 418, L. 1973; R.C.M. 1947, 16-1232.

7-5-2414. Exemption for county fairs. None of the provisions of this part applies to any printing or advertising that may be required in connection with the holding of county fairs and expositions.

History: En. Sec. 9, Ch. 280, L. 1967; amd. Sec. 62, Ch. 348, L. 1974; R.C.M. 1947, 16-1233.

Part 25

Vacation of Plats

7-5-2501. Vacation of plats in abandoned townsites. (1) When there is filed in the office of the county clerk of any county of this state a plat of any village or townsite or a plat of any vineyard tracts, acreage tracts, suburban tracts, or community tracts and it is desired by the owners of the land to vacate the plat, the county commissioners of the county in which such plat is filed shall, upon petition of the owners of the land described in the plat and upon such conditions as may be reasonable, cancel the plat and shall vacate the lots, streets, alleys, parks, and boulevards, if any, described in the plat. Thereafter the designation of the property shall be by metes and bounds or by legal subdivisions if the circumstances require and the same shall be assessed accordingly. If any post office, store, or other business establishment is located within the platted area, that fact shall not prevent the cancellation and vacating of the plat in accordance with the terms of this section, but in all cases where it is necessary to designate the location of any such post office, store, or other business property by metes and bounds for purposes of identification, this designation shall be made in the order to be entered by the board of county commissioners.

(2) Petitions under the terms of this section shall be signed by all the owners of the land in the platted area, shall distinctly refer to the original plat for purposes of identification, and shall disclose that the petitioners are the owners of all the lands described in the plat and that no rights of any person have intervened since the filing of the plat which would be adversely affected by the cancellation and annulment thereof.

History: En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907; re-en. Sec. 5308, R.C.M. 1921; amd. Sec. 1, Ch. 54, L. 1929; amd. Sec. 1, Ch. 117, L. 1935; re-en. Sec. 5308, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1951; amd. Sec. 1, Ch. 27, L. 1955; R.C.M. 1947, 11-2803(part); amd. Sec. 3, Ch. 311, L. 1979.

7-5-2502. Vacation of portion of village or townsite. (1) When only a portion of any village or townsite in any unincorporated village or town is sought to be vacated or excluded therefrom and said portion is not less than three blocks in area and is situated at the limits or boundaries of said village or townsite, a verified petition may be filed in the office of the clerk of the district court of the county where said village or townsite is situated by the owner or owners of all the property sought to be vacated or excluded. The petition shall be addressed to the district court of the county, setting forth the description of the portion sought to be excluded and the reason or reasons for desiring such portion to be excluded. A citation shall thereupon be issued by the judge of the court before whom said matter is pending, citing all persons interested in said matter to appear before said court at a time and place specified in said citation, but at a time not less than 3 weeks from the date of said citation. The citation shall be published in a newspaper of regular circulation in the county or, if no such newspaper is in said county, then in such a newspaper located in an adjoining county of the state. The citation shall be published once a week for 2 successive weeks before the date of said hearing.

(2) Upon the hearing of said petition and upon conditions that may seem reasonable, the court may vacate and exclude the portion of said village or townsite as prayed for in said petition, including any streets, alleys, parks, or boulevards upon which no public easement or easements shall vest. Such excluded property shall be described by metes and bounds in the decree of the court, and said property shall be assessed accordingly.

History: **En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907; re-en. Sec. 5308, R.C.M. 1921; amd. Sec. 1, Ch. 54, L. 1929; amd. Sec. 1, Ch. 117, L. 1935; re-en. Sec. 5308, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1951; amd. Sec. 1, Ch. 27, L. 1955; R.C.M. 1947, 11-2803(part).**

7-5-2503. Action by city council required to validate vacation by county commissioners. The action of the county commissioners prior to February 3, 1943, vacating any streets, avenues, alleys, parks, or boulevards within the corporate limits of any incorporated city or town the vacating of which at the time of the action of the county commissioners required action by any city council, shall not be effective for the purpose of vacating any such streets, avenues, alleys, parks, or boulevards unless or until the same are vacated by such city council.

History: **En. Sec. 1, Ch. 13, L. 1943; R.C.M. 1947, 11-2804(part).**

7-5-2504. Vacation of public sites in unincorporated places. Whenever a petition signed by freeholders owning at least two-thirds of the property fronting on any street of any unincorporated townsite in this state shall be presented to the board of county commissioners of the county in which such townsite is situated praying said board to vacate any park, boulevard, or other public place bordering on said street and the adjoining property and not used for road or highway purposes, which park, boulevard, or public place has been dedicated to public use, such board shall hear said petition, and if in its judgment it appears to be for the best interests of the public that such petition be granted, it shall, by order of the board duly entered upon its minutes, declare such park, boulevard, or public place vacated. Thereupon the land included therein shall attach to and become part of the adjoining lots of said townsite, and the title thereto shall pass with conveyance of said lots.

History: En. Sec. 1, Ch. 60, L. 1907; Sec. 3549, Rev. C. 1907; re-en. Sec. 5309, R.C.M. 1921; re-en. Sec. 5309, R.C.M. 1935; R.C.M. 1947, 11-2805.

Parts 26 through 40 reserved

Part 41

Conduct of Municipal Government

7-5-4101. General powers of municipal council. The city or town council has power to make and pass all bylaws, ordinances, orders, and resolutions not repugnant to the constitution of the United States or of the state of Montana or to the provisions of this title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this title.

History: En. Sec. 325, 5th Div. Comp. Stat. 1887; amd. Secs. 3, 4, and 5, p. 179, L. 1889; amd. Sec. 1, p. 113, L. 1893; amd. Sec. 4800, Pol. C. 1895; amd. Sec. 1, p. 203, L. 1897; re-en. Sec. 3259, Rev. C. 1907; re-en. Subd. 1, Sec. 5039, R.C.M. 1921; Cal. Pol. C. Sec. 4408; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039, R.C.M. 1935; R.C.M. 1947, 11-901.

7-5-4102. Powers and duties of mayor related to administration and executive function. (1) The mayor has power to:

(a) communicate to the council, at the beginning of every session and more often if considered necessary, a statement of the affairs of the city or town, with such recommendations as the mayor considers proper;

(b) recommend to the council such measures connected with the public health, cleanliness, and ornament of the city or town and the improvement of the government and finances as the mayor considers expedient;

(c) call special meetings of the council;

(d) cause to be presented, once in 3 months, a full statement of the financial condition of the city or town;

(e) bid for the city or town on any property sold at a tax or judicial sale whenever the city or town is an interested party;

(f) procure and have in his custody the seal of the city or town;

(g) take and administer oaths;

(h) perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

(2) The mayor is the presiding officer of the council and must sign the journals thereof and all warrants on the city treasury and decide all ties by his vote. The mayor has no other vote.

History: (1)En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; Sec. 11-802, R.C.M. 1947; (2)En. Sec. 4782, Pol. C. 1895; re-en. Sec. 3251, Rev. C. 1907; re-en. Sec. 5031, R.C.M. 1921; re-en. Sec. 5031, R.C.M. 1935; Sec. 11-803, R.C.M. 1947; R.C.M. 1947, 11-802(part), 11-803; amd. Sec. 4, Ch. 311, L. 1979.

7-5-4103. Council rules and discipline. The council may determine the rules of its proceedings, punish its members for improper conduct, and expel any member for the same by a two-thirds vote of the members elected.

History: En. Sec. 4802, Pol. C. 1895; re-en. Sec. 3262, Rev. C. 1907; re-en. Sec. 5053, R.C.M. 1921; Cal. Pol. C. Sec. 4407; re-en. Sec. 5053, R.C.M. 1935; R.C.M. 1947, 11-1013(part).

7-5-4104. Control of nuisances. The city or town council has power to:

(1) define and abate nuisances and impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises which they occupy or control;

(2) regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement.

History: En. Subds. 33, 81, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.32, 5039.80, R.C.M. 1935; R.C.M. 1947, 11-935, 11-983.

7-5-4105. Responsibility for mob damage. Every city or town is responsible for injuries to real or personal property within its corporate limits done or caused by mobs or riots.

History: En. Sec. 5036, Pol. C. 1895; re-en. Sec. 3485, Rev. C. 1907; re-en. Sec. 5086, R.C.M. 1921; Cal. Pol. C. Sec. 4452; re-en. Sec. 5086, R.C.M. 1935; R.C.M. 1947, 11-1503.

7-5-4106. Power of condemnation. The city or town council has power to condemn private property for opening, establishing, widening, or altering any street, alley, park, sewer, or waterway in the city or town and for establishing, constructing, and maintaining any sewer, waterway, or drain ditch outside of the corporate limits of the municipality or for any other municipal and public use. The ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking and must conform to and the proceedings thereunder had as provided in Title 70, chapters 30 and 31, concerning eminent domain.

History: En. Subd. 75, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.74, R.C.M. 1935; R.C.M. 1947, 11-977.

7-5-4107. Municipal census. The city or town council has power to take a census of the inhabitants of a city or town at any time.

History: En. Subd. 77, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.76, R.C.M. 1935; R.C.M. 1947, 11-979.

7-5-4108. Municipal printing contract. The city or town council has power to provide for the city or town printing. The contract for city or town printing must be let annually to the lowest bidder.

History: En. Subd. 78, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.77, R.C.M. 1935; R.C.M. 1947, 11-980.

7-5-4109. Control of conflict of interest. The mayor, any member of the council, any city or town officer, or any relative or employee thereof must not be directly or indirectly interested in the profits of any contract entered into by the council while he is or was in office.

History: En. Sec. 345, 5th Div. Comp. Stat. 1887; amd. Sec. 4806, Pol. C. 1895; re-en. Sec. 3277, Rev. C. 1907; re-en. Sec. 5069, R.C.M. 1921; re-en. Sec. 5069, R.C.M. 1935; R.C.M. 1947, 11-1201.

7-5-4110. Compensation and duties of city employees. The city or town council has power to fix the compensation and to prescribe the duties of all employees of the city or town, subject to the limitations mentioned in this code.

History: En. Subd. 47, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.46, R.C.M. 1935; R.C.M. 1947, 11-949(part).

7-5-4111. City work week. All full-time salaried city employees shall work a minimum of 40 hours per week.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part).

7-5-4112. Reports from municipal officers. The city or town council has power to require from an officer at any time a report in detail of the transactions in his office or any matter connected therewith.

History: En. Subd. 60, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.59, R.C.M. 1935; R.C.M. 1947, 11-962.

7-5-4113 through 7-5-4120 reserved.

7-5-4121. Conduct of council business. (1) A majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and adjourn to any time stated and may compel the attendance of absent members, under such rules and penalties as the council may prescribe.

(2) The ayes and noes must be called and recorded on the final passage of any ordinance, bylaw, or resolution or the making of any contract. The voting on the election or appointment of any officer must be viva voce. A majority of the whole number of the members elected is requisite to appoint or elect an officer, and such vote must be recorded.

History: (1)En. Sec. 4801, Pol. C. 1895; re-en. Sec. 3261, Rev. C. 1907; re-en. Sec. 5052, R.C.M. 1921, Cal. Pol. C. Sec. 4406; re-en. Sec. 5052, R.C.M. 1935; Sec. 11-1012, R.C.M 1947; (2)En. Secs. 333-337-347, 5th Div. Comp. Stat. 1887; amd. Secs. 2 and 6, pp. 122, 126, L. 1893; amd. Sec. 4803, Pol. C. 1895; re-en. Sec. 3263, Rev. C. 1907; re-en. Sec. 5054, R.C.M. 1921; re-en. Sec. 5054, R.C.M. 1935; Sec. 11-1014, R.C.M. 1947; R.C.M. 1947, 11-1012, 11-1014.

7-5-4122. Special meetings of council. When a special meeting of the council is called under 7-5-4102(1)(c), the mayor must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4123. Journal of council proceedings. The council must cause a journal of the proceedings to be kept, which must be open to inspection.

History: En. Sec. 4802, Pol. C. 1895; re-en. Sec. 3262, Rev. C. 1907; re-en. Sec. 5053, R.C.M. 1921; Cal. Pol. C. Sec. 4407; re-en. Sec. 5053, R.C.M. 1935; R.C.M. 1947, 11-1013(part).

7-5-4124. Destruction of old municipal records. (1) Except as provided in subsection (2), upon the order of the city or town council or commission and with the approval of the department of administration, a city or town officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records.

(2) Records relating to the operation of any public utility by a city or town may be destroyed without the approval of the department of administration after the expiration of the period during which they must be kept by said city or town as specified in the appropriate regulations of the public service commission of Montana.

(3) Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any city or town officer after a period of 5 years.

History: (1), (2)En. Sec. 3, Ch. 92, L. 1935; re-en. Sec. 455.3, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1974; amd. Sec. 80, Ch. 348, L. 1974; amd. Sec. 37, Ch. 213, L. 1975; Sec. 59-515, R.C.M. 1947; (3)En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; Sec. 59-516, R.C.M. 1947; R.C.M. 1947, 59-515, 59-516(part); amd. Sec. 1, Ch. 217, L. 1981; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 217 reduced the time period for keeping records from 25 to 5 years.

Chapter 274 substituted "department of administration" for "department of community affairs" in (1) and (2).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-5-4124 . . . are transferred to the department of administration."

7-5-4125 through 7-5-4140 reserved.

7-5-4141. Membership in organizations of municipal officers. (1) The governing body of a city or town may pay:

(a) the membership fees and dues in any organization of city and town officials when the purpose of the organization is improvement of laws relating to city and town government and their better and more economical administration; and

(b) the necessary expenses of any regular officer or employee of the city or town in attending any convention or meeting of such organization upon the direction of the governing body by order upon its minutes, stating that the public interest requires such attendance.

(2) The payment of membership fees, dues, and/or expenses is to be made from such fund of the city or town as the governing body shall direct in the order, with the claim presented, audited, and allowed as are other claims against the city or town.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(3); amd. Sec. 5, Ch. 311, L. 1979.

7-5-4142. Attendance at meetings and conventions by municipal officers and employees. Unless otherwise provided by law, no city officer or employee may receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gathering as the officer or employee may by virtue of his office find it necessary to attend.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933;

re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 6, Ch. 311, L. 1979.

Part 42

Municipal Ordinances and Resolutions

7-5-4201. Municipal ordinances. (1) The style of ordinances may be as follows: "Be it ordained by the council of the city of .... (or town of ....)", and all ordinances may be published or posted as prescribed by the council.

(2) All ordinances, bylaws, and resolutions must be passed by the council and approved by the mayor or the person acting in his stead and must be recorded in a book kept by the clerk, called "The Ordinance Book", and numbered by numerical decimal system in the order in which they are passed or codified.

(3) No ordinance shall be passed containing more than one subject, which shall be clearly expressed in its title, except ordinances for the codification and revision of ordinances.

History: (1)En. Sec. 4804, Pol. C. 1895; re-en. Sec. 3264, Rev. C. 1907; re-en. Sec. 5055, R.C.M. 1921; re-en. Sec. 5055, R.C.M. 1935; Sec. 11-1101, R.C.M. 1947; (2), (3)En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; Sec. 11-1102, R.C.M. 1947; R.C.M. 1947, 11-1101, 11-1102(part).

7-5-4202. Incorporation of technical codes by reference. (1) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference.

(2) At least 15 days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town. Three copies of the code or part to be adopted shall be filed with the clerk of the city or town for inspection by the public.

(3) If a technical code or part of a code is adopted by reference, a record in "The Ordinance Book" may be made by recording the ordinance without setting forth the provisions of the code or part of a code adopted.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(2), (3).

7-5-4203. Effective date of ordinances and resolutions. No ordinance or resolution passed by the council of any city or town may become effective until 30 days after its passage except:

(1) general appropriation ordinances providing for the ordinary and current expenses of the city or town; and

(2) emergency measures.

History: En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R.C.M. 1921; re-en. Sec. 5060, R.C.M. 1935; R.C.M. 1947, 11-1106(part); amd. Sec. 7, Ch. 311, L. 1979.

7-5-4204. Details relating to emergency measures. In the case of emergency measures, the emergency must be expressed in the preamble or in the body of the measure and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances, the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety and shall not include:

(1) a franchise or license to a corporation or individual;

(2) any provisions for the sale of real estate;

(3) any lease or letting of any property for a period exceeding 1 year; or

(4) the purchase or sale of personal property exceeding $5,000 in value.

History: En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R.C.M. 1921; re-en. Sec. 5060, R.C.M. 1935; R.C.M. 1947, 11-1106(part).

7-5-4205. Powers of mayor related to ordinances and resolutions. The mayor has power to:

(1) cause the ordinances of the city or town to be executed;

(2) approve all ordinances and resolutions of the council adopted by it;

(3) veto any objectionable part of a resolution or ordinance and approve the other parts.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4206. Procedure to veto ordinance or resolution. (1) In case an ordinance or resolution does not meet the mayor's approbation, the mayor has power to return the same to the next regular meeting of the council, with all objections in writing. No ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.

(2) If the mayor fails to return any resolution or ordinance as aforesaid, the same takes effect without further action.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4207. Penalties for violation of municipal ordinances. The city or town council has power to impose fines and penalties for the violation of any city ordinance, but no fine or penalty may exceed $500 and no imprisonment may exceed 6 months for any one offense.

History: En. Subd. 48, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.47, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1974; R.C.M. 1947, 11-950.

7-5-4208. Applicability of part. (1) Except as provided in subsection (2), the provisions of this part govern the adoption procedures and effect of municipal ordinances, resolutions, and initiatives and referenda.

(2) The following provisions apply to adoption procedures and effect of municipal ordinances, resolutions, and initiatives and referenda notwithstanding the provisions of this part:

(a) provisions of law not within Title 7, chapter 5, parts 1 and 42;

(b) sections of Title 7, chapter 5, part 1, that are in conflict with the provisions of this part which a municipality by ordinance adopts for governing its procedures or effects; and

(c) sections of Title 7, chapter 5, part 1, that address procedures or effects which are neither addressed by this part nor in conflict with any provision of this part.

History: **En. Sec. 1, Ch. 315, L. 1981.**

Compiler's Comments

Erroneous Reference: The reference in (1) which suggests that this part has provisions governing initiative and referendum procedures is erroneous. Those provisions were repealed by sec. 407, Ch. 571, L. 1979. For the current provisions governing initiative and referendum procedures, see Title 7, chapter 5, part 1, as referred to in (2).

Codification Instruction: Section 2, Ch. 315, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 7, chapter 5, part 42, and the provisions of section 1 apply to Title 7, chapter 5, part 42."

7-5-4209 and 7-5-4210 reserved.

7-5-4211 through 7-5-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-5-4211 through 7-5-4216. En. Ch. 167, L. 1907; Sec. 3266, Rev. C. 1907; re-en. Sec. 5058, R.C.M. 1921; re-en. Sec. 5058, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1951; amd. Sec. 1, Ch. 126, L. 1967; R.C.M. 1947, 11-1104.

7-5-4217. (1)En. Ch. 167, L. 1907; Sec. 3269, Rev. C. 1907; re-en. Sec. 5061, R.C.M. 1921; re-en. Sec. 5061, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1967; Sec. 11-1107, R.C.M. 1947; (2)En. Ch. 167, L. 1907; Sec. 3276, Rev. C. 1907; re-en. Sec. 5068, R.C.M. 1921; re-en. Sec. 5068, R.C.M. 1935; Sec. 11-1114, R.C.M. 1947; R.C.M. 1947, 11-1107, 11-1114.

7-5-4218. En. Ch. 167, L. 1907; Sec. 3275, Rev. C. 1907; re-en. Sec. 5067, R.C.M. 1921; re-en. Sec. 5067, R.C.M. 1935; R.C.M. 1947, 11-1113.

7-5-4219. En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R.C.M. 1921; re-en. Sec. 5066, R.C.M. 1935; R.C.M. 1947, 11-1112(part).

7-5-4220. En. Ch. 167, L. 1907; Secs. 3267, 3270, 3271, Rev. C. 1907; re-en. Secs. 5059, 5062, 5063, R.C.M. 1921; re-en. Secs. 5059, 5062, 5063, R.C.M. 1935; R.C.M. 1947, 11-1105, 11-1108, 11-1109.

7-5-4221. En. Ch. 167, L. 1907; Sec. 3272, Rev. C. 1907; re-en. Sec. 5064, R.C.M. 1921; re-en. Sec. 5064, R.C.M. 1935; R.C.M. 1947, 11-1110.

7-5-4222. En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R.C.M. 1921; re-en. Sec. 5065, R.C.M. 1935; R.C.M. 1947, 11-1111(part).

7-5-4223. En. Ch. 167, L. 1907; Sec. 3274, Rev. C. 1907; re-en. Sec. 5066, R.C.M. 1921; re-en. Sec. 5066, R.C.M. 1935; R.C.M. 1947, 11-1112(part).

7-5-4224 and 7-5-4225. En. Ch. 167, L. 1907; Sec. 3273, Rev. C. 1907; re-en. Sec. 5065, R.C.M. 1921; re-en. Sec. 5065, R.C.M. 1935; R.C.M. 1947, 11-1111(part).

Part 43

Municipal Contracts and Franchises

7-5-4301. Power to enter and execute contracts. (1) The city or town council has power to make any and all contracts necessary to carry into effect the powers granted by this code and to provide for the manner of executing the same.

(2) All necessary contracts for professional, technical, engineering, and legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307.

History: **(1)En. Subd. 63, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.62, R.C.M. 1935; Sec. 11-965, R.C.M. 1947; (2)En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; Sec. 11-1202, R.C.M. 1947; R.C.M. 1947, 11-965, 11-1202(part).**

7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment, for any materials or supplies of any kind, or for construction, repair, or maintenance for which must be paid a sum exceeding $10,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) Such advertisement shall be made in the official newspaper of the city or town if there be such official newspaper, and if not, it shall be made in a daily newspaper of general circulation published in the city or town if there be such and, otherwise, by posting in three of the most public places in the city or town. Such advertisement, if by publication in a newspaper, shall be made once each week for 2 consecutive weeks, and the second publication shall be made not less than 5 days or more than 12 days before the consideration of bids. If such advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids.

(3) The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement and may reject any and all bids and readvertise as provided herein.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 1, Ch. 429, L. 1981.

Compiler's Comments

1981 Amendment: Extended the coverage of the types of contracts to include repair and maintenance; increased the minimum contract amount requiring bids from $4,000 to $10,000 in (1).

7-5-4303. Exemptions from bidding or advertising requirements for certain contracts. (1) The provisions of 7-5-4302 as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, insurrection, or other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

(2) When there are sufficient funds in the budget for supplies or equipment, a city or town may, without bid, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).

7-5-4304. Certain contracts to be submitted to voters. No contract may be let extending over a period of 5 years or more without first submitting the question to a vote of the electors of the city or town.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1,

Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 8, Ch. 311, L. 1979.

7-5-4305. Prohibition on division of contracts to circumvent bidding requirements. Whenever any law of this state provides a limitation upon the amount of money that a city or town can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a city or town shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder, which by its nature or character is integral to such public work or construction project or serves to accomplish one of the basic purposes or functions thereof, into several contracts or separate work orders or by any similar device.

History: En. Sec. 1, Ch. 183, L. 1971; R.C.M. 1947, 11-1202.1.

7-5-4306. Use of installment purchase contract. (1) Subject to the requirements of subsection (2), when the amount to be paid under any such contract shall exceed the amount set forth in 7-5-4302(1), the council may provide for the payment of such an amount in installments extending over a period of not more than 5 years; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then-current fiscal year and the budget for each following year in which any portion of such purchase price is to be paid shall contain an appropriation for the purpose of paying the same.

(2) When such amount is extended over a term of 2 years, at least 40% thereof shall be paid the first year and the remainder the second year. When such amount is extended over a term of 3 years, at least one-third thereof shall be paid each year. If such amount is extended over a term of 4 years, at least one-fourth is to be paid each year. If such amount is extended over a term of 5 years, at least one-fifth is to be paid each year.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 2, Ch. 429, L. 1981.

Compiler's Comments

1981 Amendment: Substituted a reference to 7-5-4302(1) for a $4,000 amount at which contract payments may be made in installments.

7-5-4307. Sale or trade-in of old supplies or equipment. Old supplies or equipment may be sold by the city or town to the highest responsible bidder after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220,

L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).

7-5-4308. Procedure to modify contract. (1) When it becomes necessary in the prosecution of any work to make alterations or modifications of the specifications or plans of a contract, such alteration or modification must only be made by resolution of the council. Such resolution is of no effect until the price to be paid for the same is agreed to in writing and signed by the contractor and approved by the council.

(2) No contractor must be allowed anything for extra work caused by an alteration or modification unless a resolution is made and an agreement signed as provided in subsection (1). He must not in any case be allowed more for such alteration than the price fixed by such agreement.

History: En. Secs. 4809, 4810, Pol. C. 1895; re-en. Secs. 3280, 3281, Rev. C. 1907; re-en. Secs. 5072, 5073, R.C.M. 1921; re-en. Secs. 5072, 5073, R.C.M. 1935; R.C.M. 1947, 11-1204, 11-1205.

7-5-4309. Oath of contractor required for payment. No money must be paid to any person claiming under a contract with the council until such person has first filed with the clerk a statement under oath disclosing the names of all persons directly or indirectly interested in the contract or the proceeds or profits thereof and declaring that no persons other than those named are interested and that no person forbidden by this title has any interest in the same.

History: En. Sec. 4808, Pol. C. 1895; re-en. Sec. 3279, Rev. C. 1907; re-en. Sec. 5071, R.C.M. 1921; re-en. Sec. 5071, R.C.M. 1935; R.C.M. 1947, 11-1203.

7-5-4310 through 7-5-4320 reserved.

7-5-4321. Grant of exclusive franchise — election required. (1) The council may not grant an exclusive franchise or special privilege to any person except in the manner specified in subsection (2). The powers of the council are only those expressly prescribed by law and those necessarily incident thereto.

(2) No exclusive franchise for any purpose may be granted by any city or town or by the mayor or city council thereof to any person, association, or corporation without first submitting the application therefor to the electors of the city.

History: (1)En. Sec. 4813, Pol. C. 1895; re-en. Sec. 3290, Rev. C. 1907; amd. Sec. 1, Ch. 29, L. 1921; re-en. Sec. 5074, R.C.M. 1921; re-en. Sec. 5074, R.C.M. 1935; Sec. 11-1206, R.C.M. 1947; (2)En. Sec. 1, Ch. 85, L. 1903; re-en. Sec. 3291, Rev. C. 1907; re-en. Sec. 5075, R.C.M. 1921; re-en. Sec. 5075, R.C.M. 1935; Sec. 11-1207, R.C.M. 1947; R.C.M. 1947, 11-1206, 11-1207; amd. Sec. 9, Ch. 311, L. 1979; amd. Sec. 1, Ch. 283, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "exclusive" before "franchise" in (1) and (2).

Effective Date: Section 2, Ch. 283, L. 1981, provided: "This act is effective on passage and approval." Approved April 6, 1981.

7-5-4322. Election on question of granting franchise. (1) Notice of the election shall be published as provided in 13-1-108. The notice must state the time and place of holding the election, the character of any such franchise applied for, and the valuable consideration, if there is any, to be derived by the city.

(2) At such election the ballots must contain the words "For granting franchise" and "Against granting franchise", and in voting, the elector must

make a cross (X) opposite the answer he intends to vote for. The election must be conducted and canvassed and the return made in the same manner as other city or town elections.

(3) If the majority of the votes cast at the election are "For granting franchise", the mayor and city council must thereupon grant the same by the passage and approval of a proper ordinance.

History: (1), (2)En. Sec. 2, Ch. 85, L. 1903; re-en. Sec. 3292, Rev. C. 1907; re-en. Sec. 5076, R.C.M. 1921; re-en. Sec. 5076, R.C.M. 1935; Sec. 11-1208, R.C.M. 1947; (3)En. Sec. 3, Ch. 85, L. 1903; re-en. Sec. 3293, Rev. C. 1907; re-en. Sec. 5077, R.C.M. 1921; re-en. Sec. 5077, R.C.M. 1935; Sec. 11-1209, R.C.M. 1947; R.C.M. 1947, 11-1208, 11-1209; amd. Sec. 304, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

Part 44

Municipal Elections

7-5-4401. Division of municipalities into wards. (1) The first city or town council elected under the provisions of this title must divide the city or town into wards for election and other purposes, having regard to population so as to make them as nearly equal as possible.

(2) (a) Cities of the first class must be divided into not less than four or more than 10 wards.

(b) Cities of the second class must be divided into not less than three or more than six wards.

(c) Cities of the third class must be divided into not less than two or more than four wards.

(d) Towns must be divided into not less than two or more than three wards; provided, however, that the town council may by ordinance reduce the number of wards in a town to only one if it so desires.

(3) All changes in the number and boundaries of wards must be made by ordinance. No new ward must be created unless there shall be within its boundaries 150 or more electors.

History: (1)En. Sec. 4746, Pol. C. 1895; re-en. Sec. 3222, Rev. C. 1907; re-en. Sec. 5001, R.C.M. 1921; re-en. Sec. 5001, R.C.M. 1935; Sec. 11-707, R.C.M. 1947; (2), (3)En. Sec. 4747, Pol C. 1895; re-en. Sec. 3223, Rev. C. 1907; amd. Sec. 1, Ch. 74, L. 1909; re-en. Sec. 5002, R.C.M. 1921; re-en. Sec. 5002, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1943; Sec. 11-708, R.C.M. 1947; R.C.M. 1947, 11-707, 11-708.

7-5-4402 through 7-5-4409. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-5-4402. En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 4003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part).

7-5-4403. En. Sec. 4754, Pol. C. 1895; re-en. Sec. 3230, Rev. C. 1907; re-en. Sec. 5009, R.C.M. 1921; re-en. Sec. 5009, R.C.M. 1935; amd. Sec. 4, Ch. 76, L. 1961; R.C.M. 1947, 11-715.

7-5-4404. En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R.C.M. 1921; re-en. Sec. 5011, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955; R.C.M. 1947, 11-717(part).

7-5-4405. En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909;

re-en. Sec. 5011, R.C.M. 1921; re-en. Sec. 5011, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955; R.C.M. 1947, 11-717(part).

7-5-4406. En. Sec. 1, Ch. 187, L. 1907; Sec. 3232, Rev. C. 1907; amd. Sec. 1, Ch. 59, L. 1909; re-en. Sec. 5011, R.C.M. 1921; re-en. Sec. 5011, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1939; amd. Sec. 1, Ch. 86, L. 1941; amd. Sec. 1, Ch. 124, L. 1947; amd. Sec. 1, Ch. 14, L. 1955; R.C.M. 1947, 11-717(part).

7-5-4407. En. Sec. 4757, Pol. C. 1895; re-en. Sec. 3233, Rev. C. 1907; re-en. Sec. 5012, R.C.M. 1921; re-en. Sec. 5012, R.C.M. 1935; R.C.M. 1947, 11-718.

7-5-4408. En. Sec. 57, Ch. 368, L. 1969; amd. Sec. 2, Ch. 343, L. 1971; R.C.M. 1947, 23-3302.

7-5-4409. En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

CHAPTER 6

FINANCIAL ADMINISTRATION AND TAXATION

Part 1 — In-Lieu Payments for Taxes

Section
7-6-101. Definitions.
7-6-102. Authorization to request in-lieu payments for taxes from United States.
7-6-103. Computation of payment in lieu of taxes.
7-6-104. Procedure to file agreement and collect in-lieu payments.
7-6-105. Establishment and use of government project fund.
7-6-106. Political subdivisions to receive county warrants for share of in-lieu payments.
7-6-107. Procedure for subdivisions other than county to deal directly with United States.
7-6-108. Disposition of in-lieu payments by subdivisions.
7-6-109. Requirement to provide services in absence of agreement.

Part 2 — Deposit and Investment of Public Money

7-6-201. Deposit of public funds in financial institutions.
7-6-202. Investment of public money in direct obligations of the United States.
7-6-203. Interest rates on deposits of public money.
7-6-204. Crediting of interest.
7-6-205. Demand deposits.
7-6-206. Time deposits — repurchase agreement.
7-6-207. Deposit security.
7-6-208. Substitution of deposit security.
7-6-209. Director of department of administration to sign trustee and deposit receipts.
7-6-210. Supervisory role of department of administration.
7-6-211. Report by financial institution.
7-6-212. Limitation on liability of treasurer or town clerk.
7-6-213. Repurchase agreements — bidding.

Parts 3 through 20 reserved

Part 21 — Office of County Treasurer

7-6-2101. Procedure if county treasurer dies in office.
7-6-2102. Limitation on number of deputy county treasurers.
7-6-2103. Suspension of county treasurer in case of misconduct.
Sections 7-6-2104 through 7-6-2110 reserved.
7-6-2111. Duties of county treasurer.
7-6-2112. Treasurer's reports to county commissioners.
7-6-2113. Effect of failure to make treasurer's report.
7-6-2114. Inspection of treasurer's books and records.
7-6-2115. Manner of settling accounts.
7-6-2116. Receipt for money paid to county treasurer.
7-6-2117. Receipt of money from county attorney.

7-6-2118. Receipt of money from predecessor county treasurer.
Sections 7-6-2119 through 7-6-2130 reserved.
7-6-2131. Fees of county treasurer.

Part 22 — General Provisions Related to Counties

7-6-2201. Fiscal year for counties.
7-6-2202. Duties of county clerk related to finance.
7-6-2203. Annual financial statement.
7-6-2204. Cash verification by county clerk.
Sections 7-6-2205 through 7-6-2210 reserved.
7-6-2211. Authorization to conduct county business on a cash basis.
7-6-2212. Authorization to maintain petty cash fund.
7-6-2213. Report of fees received and money disbursed.
7-6-2214. Examination of report.
7-6-2215. Repealed. Sec. 1, Ch. 135, L. 1979.
7-6-2216. Repealed. Sec. 1, Ch. 135, L. 1979.
7-6-2217. Administration of relief received from federal agencies.
7-6-2218. Appropriation of state and federal money by county.
7-6-2219. Authorization to establish capital improvement fund.
7-6-2220. Levy for capital improvement fund.
7-6-2221. Limitations on capital improvement fund.

Part 23 — County Budget Law

7-6-2301. Construction of part.
7-6-2302. Role of department of administration.
7-6-2303. Violations.
Sections 7-6-2304 through 7-6-2310 reserved.
7-6-2311. Filing of estimate of revenues and expenses with county clerk.
7-6-2312. Penalty for noncompliance with filing requirements.
7-6-2313. Preparation of expenditure program and information on sources of revenue.
7-6-2314. Classification of estimates, appropriations, and expenditures.
7-6-2315. Consideration of tabulation by county commissioners — preparation of preliminary budget.
7-6-2316. Notice of hearing on preliminary budget.
7-6-2317. Hearing on preliminary budget.
7-6-2318. Determination of projected fund cash flow following hearing.
7-6-2319. Determination of fund requirements to be met by tax levy.
7-6-2320. Final budget — approval and adoption.
7-6-2321. Fixing of tax levy.
7-6-2322. Budget and tax levies to be supplied to department of administration.
7-6-2323. Effect of exceeding budget appropriations — personal liability.
7-6-2324. Limitations on appropriations after budget adopted.
7-6-2325. Transfer of appropriations within and among expenditure classes.
7-6-2326. Transfer of cash balance in fund at close of fiscal year.
7-6-2327. Use of bond proceeds and borrowed money.
7-6-2328. Restriction on tax-financed expenditures if voter approval of tax levy required.
7-6-2329. Procedure when unpaid and outstanding warrants exist at end of fiscal year.
7-6-2330. Lapse of appropriation.
7-6-2331. Clerk's report concerning expenditures, liabilities, and appropriations — auditor's report.
Sections 7-6-2332 through 7-6-2340 reserved.
7-6-2341. Procedure to make expenditures and incur liabilities in case of serious emergencies.
7-6-2342. Procedure to make expenditures and incur liabilities in case of other emergencies.
7-6-2343. Appeal of order for certain emergency expenditures.
7-6-2344. Limitation on amount of emergency expenditures and liabilities — election.
7-6-2345. Use of emergency warrants.
Sections 7-6-2346 through 7-6-2350 reserved.
7-6-2351. District court budget.
7-6-2352. State grants to district courts.

Part 24 — County Auditor and Claims Against County

7-6-2401. Creation of office of county auditor.

7-6-2402. Optional election for county auditor.
7-6-2403. Qualifications of county auditor.
7-6-2404. Oath of office.
7-6-2405. Location of office.
7-6-2406. Compensation of auditor.
7-6-2407. Auditing and investigation of claims.
7-6-2408. Auditor's powers related to investigations.
7-6-2409. Examination of county books and accounts.
7-6-2410. Maintenance of records.
7-6-2411. List of claims allowed or rejected.
7-6-2412. Other duties of auditor.
7-6-2413. Limitation on number of deputy county auditors.
Sections 7-6-2414 through 7-6-2420 reserved.
7-6-2421. Presentation of claims against county.
7-6-2422. Opposition to claims.
7-6-2423. Procedure for claims by county commissioners.
7-6-2424. Appeal of decision concerning claim.
7-6-2425. Auditing of county charges.
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Part 44 — Municipal Taxation

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7-6-4434. Notice of election on question of additional mill levy.
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7-6-4436. Conduct of election.
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7-6-4455. Changes from all-purpose levy method.

Part 45 — Municipal Warrants

7-6-4501. Interest on unpaid warrants.
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Part 46 — Deposit and Investment of Municipal Money

7-6-4601. Deposit of public money.
7-6-4602. Interest rate on deposited public money.
7-6-4603. Investment of municipal money in city or town warrants.

Part 1

In-Lieu Payments for Taxes

7-6-101. Definitions. The following definitions shall be applied to the terms used in this part:

(1) "Agreement" shall mean contract and shall include renewals and alterations of a contract.

(2) "Board" shall mean the board of county commissioners of any county in this state.

(3) "Fund" shall mean, unless otherwise expressed, the government project fund to be established pursuant to 7-6-105.

(4) "Governing body" shall mean the commission, board, body, or persons in which the powers of a subdivision as a body corporate or otherwise are vested.

(5) "Political subdivision" shall mean any agency or unit of this state which now is or hereafter shall be authorized to levy taxes or empowered to cause taxes to be levied.

(6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States or any other lands formerly upon the tax rolls and purchased by the United States and used for resettlement, rehabilitation, or grazing purposes, located within this state or any political subdivision thereof, and shall include the persons inhabiting, occupying, or using any lands so owned or acquired by the United States.

(7) "Services" shall mean such public and municipal functions as are performed for property in and persons residing within a political subdivision.

(8) "United States" shall mean the United States of America.

History: **En. Sec. 1, Ch. 59, L. 1939; amd. Sec. 1, Ch. 139, L. 1941; R.C.M. 1947, 84-5506.**

7-6-102. Authorization to request in-lieu payments for taxes from United States. (1) The board of county commissioners of any county in this state is hereby authorized and empowered:

(a) to make requests of the United States, for and on behalf of the county and the political subdivisions whose jurisdictional limits are within or coextensive with the limits of the county, for payment of such sums in lieu of taxes as the United States may agree to pay; and

(b) to enter into agreements with the United States, in the name of the county, for the performance of services by the county and such political subdivisions for the benefit of the project and for the payment by the United States to the county, in one or more installments, of such sums in lieu of taxes.

(2) Each agreement entered into pursuant to subsection (1) shall contain the names of the political subdivisions with respect to which it is consummated and a statement of the proportionate share of the payment by the United States to which each such subdivision shall be entitled.

History: **(1)En. Sec. 2, Ch. 59, L. 1939; Sec. 84-5507, R.C.M. 1947 (2)En. Sec. 4, Ch. 59, L. 1939; Sec. 84-5509, R.C.M. 1947; R.C.M. 1947, 84-5507, 84-5509.**

7-6-103. Computation of payment in lieu of taxes. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to each political subdivision, for and on whose behalf the agreement is entered into, of performing services for the benefit of a project during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from such project, but shall not be in excess of the taxes which would result to the subdivision for the said period if the real property of the project within the subdivision were taxable.

History: **En. Sec. 3, Ch. 59, L. 1939; R.C.M. 1947, 84-5508.**

7-6-104. Procedure to file agreement and collect in-lieu payments. (1) The board shall file duplicate copies of every agreement for payment of sums in lieu of taxes with the county clerk and county treasurer.

(2) Upon receipt of the same, the county clerk shall notify each political subdivision for and on whose behalf the agreement is executed that the same has been consummated and state the share of the payment due thereunder to which the subdivision is entitled.

(3) On or before the date on which any payment of sums in lieu of taxes is due, the county treasurer shall present a bill to the United States, in the name of the county, in the amount of such payment. The county treasurer shall give to the United States a receipt in the name of the county for all payments of sums in lieu of taxes.

History: En. Sec. 5, Ch. 59, L. 1939; R.C.M. 1947, 84-5510.

7-6-105. Establishment and use of government project fund. (1) The county treasurer shall establish a fund in the county treasury to be known as the government project fund.

(2) The fund shall contain an account with each political subdivision which is entitled to a share of a payment of sums in lieu of taxes. Whenever such payment is received, the county treasurer shall apportion it to the several accounts in the fund, pursuant to the agreement under which the payment is made.

History: En. Sec. 6, Ch. 59, L. 1939; R.C.M. 1947, 84-5511.

7-6-106. Political subdivisions to receive county warrants for share of in-lieu payments. (1) After apportioning any payment to the several accounts as provided in 7-6-105, the county treasurer shall prepare in duplicate a complete itemized statement, one copy of which shall be filed with the board of county commissioners and the other of which shall be filed with the county clerk.

(2) The board shall, by appropriate resolution, order warrants drawn on the county treasury to the order of each political subdivision named in the itemized statement and in the amount of the political subdivision's share in the payment. The county clerk shall draw and sign the warrants, which shall also be signed by the chairman of the board.

(3) (a) Except as provided in subsection (3)(b), whenever such warrant is presented to the county treasurer, he shall debit the proper account in the fund and shall pay the amount of such warrant in full, without deduction, to the political subdivision presenting the same.

(b) The county treasurer may not honor such warrant unless it is endorsed by the president, chairman, or other presiding officer of the governing body of the political subdivision. The endorsement of any warrant by the presiding officer of the governing body of a political subdivision as provided in this section constitutes an approval of the agreement under which the payment was received. If any governing body of a political subdivision refuses to receive any warrant delivered pursuant to this section, the amount of the warrant shall be refunded to the United States by the county.

History: En. Sec. 7, Ch. 59, L. 1939; R.C.M. 1947, 84-5512; amd. Sec. 1, Ch. 252, L. 1979.

7-6-107. Procedure for subdivisions other than county to deal directly with United States. (1) If the United States declines to deal with a board with respect to any political subdivision whose jurisdictional limits are within or coextensive with the limits of the county or in the event the jurisdictional limits of a political subdivision lie in more than one county, that subdivision is hereby:

(a) authorized to make request of the United States for payments of such sums in lieu of taxes as the United States may agree to pay; and

(b) empowered to enter into agreements with the United States for the performance by the subdivision of services for the benefit of a project and for the payment by the United States to the subdivision, in one or more installments, of such sums in lieu of taxes.

(2) The amount of such payment may be based upon the cost of performing such services during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from the project, but shall not be in excess of the taxes which would result to the political subdivision for the period if the real property of the project within the political subdivision were taxable. Whenever any payment is received by a subdivision under an agreement entered into pursuant to this section, the governing body of such subdivision shall issue a receipt for such payment.

History: **En. Sec. 8, Ch. 59, L. 1939; R.C.M. 1947, 84-5513.**

7-6-108. Disposition of in-lieu payments by subdivisions. All money received by a political subdivision pursuant to 7-6-106 or under 7-6-107 shall be deposited in such fund or funds or items of a fund or funds as may be designated in the agreement. If the agreement does not make such designation, the money received shall be deposited in such fund or funds or items of a fund or funds as the governing body of such subdivision shall by appropriate resolution direct.

History: **En. Sec. 9, Ch. 59, L. 1939; R.C.M. 1947, 84-5514.**

7-6-109. Requirement to provide services in absence of agreement. No provision of this part shall be construed to relieve any political subdivision of this state, in the absence of an agreement for payment of sums in lieu of taxes by the United States as provided in this part, of the duty of furnishing for the benefit of a project all services which the subdivision usually furnishes for property in and persons residing within the subdivision without a payment of sums in lieu of taxes.

History: **En. Sec. 10, Ch. 59, L. 1939; R.C.M. 1947, 84-5515.**

Part 2

Deposit and Investment of Public Money

7-6-201. Deposit of public funds in financial institutions. (1) Except as provided in 7-6-202, 7-6-206(3), 7-6-2701, it shall be the duty of all county and city treasurers and town clerks to deposit all public money in their possession and under their control in any solvent banks, building and loan associations, or savings and loan associations located in the county, city, or town of which such treasurer is an officer, subject to national supervision or state examination as the local governing body may designate, and no other.

(2) Said local governing body is hereby authorized to deposit such public money not necessary for immediate use by such county, city, or town in a savings or time deposit with any bank, building and loan association, or savings and loan association authorized above or in a repurchase agreement as authorized in 7-6-213.

(3) The treasurer or town clerk shall take from such bank, building and loan association, or savings and loan association such security as the local governing body may prescribe, approve, and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits.

(4) All such deposits shall be subject to withdrawal by the treasurer or town clerk in such amounts as may be necessary from time to time. No deposit of funds shall be made or permitted to remain in any bank, building and loan association, or savings and loan association until the security for such deposits shall have been first approved by the local governing body and delivered to the treasurer or town clerk.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 2, Ch. 329, L. 1981.

Compiler's Comments

1981 Amendment: Added "or in a repurchase agreement as authorized in 7-6-213" at the end of (2).

Effective Date: Section 5, Ch. 329, L. 1981, provided: "This act is effective on passage and approval." Approved April 10, 1981.

7-6-202. Investment of public money in direct obligations of the United States. Said local governing body is hereby authorized to invest such public money not necessary for immediate use by such county, city, or town in direct obligations of the United States government, payable within not to exceed 180 days from the time of such investment.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part).

7-6-203. Interest rates on deposits of public money. (1) The bank, building and loan association, or savings and loan association in which the money is deposited shall pay on the money no less than the rate of interest as is paid on money from private sources on the same terms.

(2) Refusal of any bank, building and loan association, or savings and loan association to pay said interest rate shall constitute a waiver of that institution's right to participate in the deposit of public funds as set forth in this part.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1,

Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part).

7-6-204. Crediting of interest. (1) Unless otherwise provided, all interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city, or town to whose credit such funds are deposited.

(2) All interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, must be credited to the account of that fire district or department.

History: (1)En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); (2)En. Sec. 1, Ch. 486, L. 1979; amd. Sec. 28, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (2), substituted "Title 7, chapter 33, part 21 or 23" for "[Title 19, chapter 12]".

7-6-205. Demand deposits. (1) Demand deposits shall be placed only in banks.

(2) When more than one bank is available in any county for the deposit of such county funds or in any city or town for the deposit of such city or town funds, such demand deposits shall be distributed ratably among all of such banks qualifying therefor and substantially in proportion to paid-in capital and surplus of each such bank willing to receive such demand deposits under the terms of this part. It shall be the duty of said county or city treasurer or town clerk to prorate all such demand deposits among all of the banks qualified to receive the same as provided in this part, to the end that an equitable distribution of such demand deposits shall be maintained.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(a).

7-6-206. Time deposits — repurchase agreement. (1) Such public money not necessary for immediate use by such county, city, or town which is not invested in direct obligations of the United States government as authorized in 7-6-202 may be placed in time or savings deposits with any bank or savings and loan association in the county, city, or town or placed in repurchase agreements as authorized in 7-6-213, and money placed in repurchase agreements is subject to subsections (2) and (3).

(2) When more than one bank or savings and loan association is available in any county for the time or savings deposit of such county funds or in any city or town for the time or savings deposit of such city or town funds, such funds may be distributed ratably among all of such banks and savings and loan associations qualifying therefor and substantially in proportion to the total property taxes paid during the preceding year in such county or the county in which such city or town is located and the corporation license taxes paid by each bank or savings and loan association willing to receive such time or savings deposits under the terms of this part.

(3) In lieu of a ratable distribution among banks and savings and loan associations within the county, city, or town, the local governing body may solicit bids without advertising from any bank or savings and loan association in a county having at least two such financial institutions. Such institutions may request in writing that they be listed for solicitation on bids for public money not necessary for immediate use by the unit of local government. In counties having less than two such institutions, the local governing body may solicit bids from and deposit public money in such institutions in neighboring counties unless the local financial institution agrees to pay the same rate of interest bid by the neighboring financial institutions. The governing body may solicit bids by notice sent by mail to the investment institutions whose names are listed as provided herein. The provisions of this subsection shall be considered as meeting the requirements of subsection (2).

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(b), (4)(c); amd. Sec. 8, Ch. 634, L. 1979; amd. Sec. 3, Ch. 329, L. 1981.

Compiler's Comments

1981 Amendment: Added "or placed in repurchase agreements as authorized in 7-6-213, and money placed in repurchase agreements is subject to subsections (2) and (3)" at the end of (1); inserted "time or savings" before "deposit of such county funds" and before "deposit of such city or town funds" in (2).

Effective Date: Section 5, Ch. 329, L. 1981, provided: "This act is effective on passage and approval." Approved April 10, 1981.

7-6-207. Deposit security. (1) The local governing body may require security only for that portion of the deposits which is not guaranteed or insured according to law and, as to such unguaranteed or uninsured portion, only to the extent of 50% of such deposits. The security shall consist of those enumerated in 17-6-103 or cashier's checks issued to the depository institution by any federal reserve bank.

(2) When negotiable securities are furnished, such securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer or town clerk, his successors, and the state of Montana and the form of receipt and the trustee have been approved by the department of administration. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It is the duty of the appropriate governing body, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of the acceptance and approval upon the record of their

proceedings, and the bonds and securities shall be reapproved at least quarter-annually thereafter.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(2), (3); amd. Sec. 1, Ch. 158, L. 1979; amd. Sec. 2, Ch. 252, L. 1979; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (2).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-207 . . . are transferred to the department of administration."

7-6-208. Substitution of deposit security. (1) Any bank, building and loan association, or savings and loan association pledging securities as provided in 7-6-207, at any time it deems advisable or desirable, may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city, or town at its next official meeting.

(2) Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward a receipt by registered or certified mail to the county, city, or town and to the depository bank, building and loan association, or savings and loan association. The receipt shall specifically describe and identify both the securities so substituted and those released and returned to the depository bank, building and loan association, or savings and loan association.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(7).

7-6-209. Director of department of administration to sign trustee and deposit receipts. The director of the department of administration shall sign all trustee and deposit receipts and releases required to be signed on behalf of the state in all cases where negotiable securities are placed in trust with a trustee, in place of the actual securities, for security of county, city, and town deposits under the laws of the state relating to the deposit of county, city, and town funds.

History: En. Sec. 1, Ch. 44, L. 1931; re-en. Sec. 4767.3, R.C.M. 1935; amd. Sec. 70, Ch. 348, L. 1974; amd. Sec. 29, Ch. 213, L. 1975; R.C.M. 1947, 16-2621; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs".

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing

the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-209 . . . are transferred to the department of administration."

7-6-210. Supervisory role of department of administration. Whenever it shall come to the attention of the department of administration that the funds of any county, city, or town are not properly deposited as provided in this part, the department shall order the treasurer of such county or city or the town clerk to deposit said funds in accordance therewith, and if such treasurer or town clerk shall refuse or neglect to comply with such order, it shall be the duty of the department to institute proceedings against such treasurer or town clerk, at the cost of the county, city, or town of which such treasurer or town clerk is an officer, on the official bond of such treasurer or town clerk.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs".

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-210 . . . are transferred to the department of administration."

7-6-211. Report by financial institution. Any bank, building and loan association, or savings and loan association receiving such deposits shall, through its president and cashier or secretary, make a statement of account quarter-annually, under oath, showing:

(1) all such money that has been deposited with such bank, building and loan association, or savings and loan association during the quarter;

(2) the amount of daily balance in dollars;

(3) the amount of interest credited or paid therefor by such bank, building and loan association, or savings and loan association; and

(4) that neither such bank, building and loan association, or savings and loan association nor any officer thereof nor any person for it has paid or given any consideration or emolument whatsoever to the treasurer or town clerk or to any other person, other than the interest provided for herein, for or on account of the making of such deposits with any such bank, building and loan association, or savings and loan association.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part).

7-6-212. Limitation on liability of treasurer or town clerk. Where money shall have been deposited in accordance with the provisions of this part, the treasurer or town clerk shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

History: **En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part).**

7-6-213. Repurchase agreements — bidding. (1) After qualifying as provided in subsection (5), a financial institution may contract with a local governing body to establish a repurchase agreement.

(2) A repurchase agreement is a contract that specifies the minimum and maximum of public money that the local governing body will invest under the contract in securities that the financial institution will sell to the local governing body and that the financial institution will repurchase on mutually agreeable terms.

(3) A repurchase agreement is not a demand account.

(4) The local governing body shall maintain in the same financial institution contracting for the repurchase agreement a demand account into which each business day shall be deposited a sum equal to the day's disbursements, and that deposit will be the proceeds of the redemption by the financial institution of securities previously purchased by the local governing body under the provisions of the repurchase agreement, so that the balance of the demand account at the close of each day's business will be zero.

(5) The local governing body shall call for bids as provided in 7-6-206 to contract for a repurchase agreement from all financial institutions chartered to do business in its jurisdiction that are authorized to accept demand deposits and to buy and sell securities. The call for bids shall specify the minimum acceptable rate of interest, effective date of the repurchase agreement and the period of duration, security pledge requirements and range of funds to be invested.

History: **En. Sec. 1, Ch. 329, L. 1981.**

Compiler's Comments

1981 Title: The title to HB 781, (Ch. 329, L. 1981) read: "An act authorizing a local governing body to contract with a financial institution for a repurchase agreement; providing for bid procedures; amending sections 7-6-201 and 7-6-206, MCA; providing an immediate effective date."

Codification Instruction: Section 4, Ch. 329, L. 1981, provided: "Section 1 [7-6-213] is intended to be codified as an integral part of Title 7, chapter 6, part 2, and the provisions of Title 7, chapter 6, part 2, apply to section 1."

Effective Date: Section 5, Ch. 329, L. 1981, provided: "This act is effective on passage and approval." Approved April 10, 1981.

Parts 3 through 20 reserved

Part 21

Office of County Treasurer

7-6-2101. Procedure if county treasurer dies in office. (1) In case of the death of any county treasurer, his legal representatives must deliver up all official money, books, accounts, papers, and documents which come into their possession.

(2) No percentage must be allowed to the treasurer on any money received by him from the legal representative of such predecessor.

History: En. Sec. 4369, Pol. C. 1895; re-en. Sec. 3005, Rev. C. 1907; re-en. Sec. 4769, R.C.M. 1921; Cal. Pol. C. Sec. 4163; re-en. Sec. 4769, R.C.M. 1935; R.C.M. 1947, 16-2623(part).

7-6-2102. Limitation on number of deputy county treasurers. (1) Except as provided in subsection (2), the whole number of deputies allowed the county treasurer must not exceed:

(a) two in counties of the first class;

(b) one in counties of all other classes.

(2) The board of county commissioners may allow such additional deputies as may be necessary during the months of November and December of each year.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part).

7-6-2103. Suspension of county treasurer in case of misconduct. Whenever any action based upon official misconduct is commenced against any county treasurer, the board of county commissioners may in its discretion suspend him from office until such suit is determined and may appoint some person to fill the vacancy.

History: En. Sec. 4368, Pol. C. 1895; re-en. Sec. 3004, Rev. C. 1907; re-en. Sec. 4768, R.C.M. 1921; Cal. Pol. C. Sec. 4162; re-en. Sec. 4768, R.C.M. 1935; R.C.M. 1947, 16-2622.

7-6-2104 through 7-6-2110 reserved.

7-6-2111. Duties of county treasurer. The county treasurer must:

(1) receive all money belonging to the county and all other money directed to be paid to him by law, safely keep the same, and apply and pay them out, rendering account thereof as required by law;

(2) keep an account of the receipt and expenditures of all such money in books provided for the purpose, in which must be entered:

(a) the amount, the time when, from whom, and on what account all money was received by him;

(b) the amount, time when, to whom, and on what account all disbursements were made by him;

(3) so keep his books that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, with the whole receipts and expenditures shown in one general or cash account;

(4) enter no money received for the current year on his account with the county for the past fiscal year until after his annual settlement for the past year has been made with the county clerk;

(5) disburse the county money only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law.

History: En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R.C.M. 1921; Cal. Pol. C. Sec. 4144; re-en. Sec. 4750, R.C.M. 1935; amd. Sec. 3, Ch. 452, L. 1975; R.C.M. 1947, 16-2601(1) thru (5).

7-6-2112. Treasurer's reports to county commissioners. (1) Each county treasurer must make a detailed monthly report to the board of county commissioners of his county, of all money received by him and the disbursement thereof and of all debts due to and from the county and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county, appear clearly and distinctly.

(2) On the first Monday of January, April, July, and October of each year the county treasurer must settle with the board of county commissioners for all money collected, and on those days the treasurer must deliver to the board affidavits verifying the reconcilement of the balance on hand in the county treasury. After the approval of the statements and the accompanying affidavits, one copy of the quarterly report shall be filed with the county clerk of the county and one copy shall be retained by the county treasurer.

History: En. Sec. 4361, Pol. C. 1895; re-en. Sec. 2997, Rev. C. 1907; re-en. Sec. 4761, R.C.M. 1921; Cal. Pol. C. Sec. 4155; re-en. Sec. 4761, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1941; R.C.M. 1947, 16-2612; amd. Sec. 3, Ch. 252, L. 1979.

7-6-2113. Effect of failure to make treasurer's report. If any county treasurer neglects or refuses to settle or report as required in 7-6-2112, he forfeits and must pay to the county the sum of $500 for every such neglect or refusal. The board of county commissioners must institute suits for the recovery thereof.

History: En. Sec. 4362, Pol. C. 1895; re-en. Sec. 2998, Rev. C. 1907; re-en. Sec. 4762, R.C.M. 1921; Cal. Pol. C. Sec. 4156; re-en. Sec. 4762, R.C.M. 1935; R.C.M. 1947, 16-2613.

7-6-2114. Inspection of treasurer's books and records. (1) The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and the grand jury.

(2) The treasurer must permit the department of administration and county clerk or the board of county commissioners to examine his books and count the money in the treasury when any of them wants to make an examination or counting.

History: (1)En. Sec. 4370, Pol. C. 1895; re-en. Sec. 3006, Rev. C. 1907; re-en. Sec. 4770, R.C.M. 1921; Cal. Pol. C. Sec. 4164; re-en. Sec. 4770, R.C.M. 1935; Sec. 16-2624, R.C.M. 1947; (2)En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R.C.M. 1921; Cal. Pol. C. Sec. 4165; amd. Sec. 1, Ch. 124, L. 1935; re-en. Sec. 4771, R.C.M. 1935; amd. Sec. 71, Ch. 348, L. 1974; amd. Sec. 1, Ch. 61, L. 1975; amd. Sec. 30, Ch. 213, L. 1975; Sec. 16-2625, R.C.M. 1947; R.C.M. 1947, 16-2624, 16-2625(1); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (2).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-2114 . . . are transferred to the department of administration."

7-6-2115. Manner of settling accounts. (1) The treasurer must settle his accounts relating to the collection, care, and disbursement of public revenue of whatsoever nature and kind with the county clerk on the first Monday of each month. For the purpose of making such settlements, he must make out a statement, under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements and to whom, with the amount remaining on hand. He must, in such settlements, deposit all warrants redeemed by him and take the county clerk's receipt therefor.

(2) He must make a full settlement of all accounts with the county clerk, annually on the first Monday of January and in the presence of the county commissioners, who have control thereof.

History: En. Sec. 4360, Pol. C. 1895; re-en. Sec. 2996, Rev. C. 1907; re-en. Sec. 4760, R.C.M. 1921; Cal. Pol. C. Sec. 4154; re-en. Sec. 4760, R.C.M. 1935; R.C.M. 1947, 16-2611.

7-6-2116. Receipt for money paid to county treasurer. When any money is paid to the county treasurer, he must issue a receipt, in triplicate, for such money, the original of which shall be delivered to the person paying the same, the duplicate of which shall be delivered to the county clerk, and the triplicate shall be retained in his office.

History: En. Sec. 4351, Pol. C. 1895; re-en. Sec. 2987, Rev. C. 1907; re-en. Sec. 4751, R.C.M. 1921; Cal. Pol. C. Sec. 4146; amd. Sec. 1, Ch. 92, L. 1923; re-en. Sec. 4751, R.C.M. 1935; R.C.M. 1947, 16-2602.

7-6-2117. Receipt of money from county attorney. (1) The county attorney must, on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by his oath, of all money received by him in his official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.

(2) If the county attorney refuses or neglects to account for and pay over money received by him as required by subsection (1), the county treasurer must bring an action against him for the recovery thereof in the name of the county and may recover in such action, in addition to the amount so received, 50% thereon by way of damages.

History: (1)En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; Sec. 16-3101, R.C.M. 1947; (2)En. Sec. 4363, Pol. C. 1895; re-en. Sec. 2999, Rev. C. 1907; re-en. Sec. 4763, R.C.M. 1921; Cal. Pol. C. Sec. 4157; re-en. Sec. 4763, R.C.M. 1935; Sec. 16-2614, R.C.M. 1947; R.C.M. 1947, 16-2614, 16-3101(5).

7-6-2118. Receipt of money from predecessor county treasurer. No percentage must be allowed to the treasurer on any money received by him from his predecessor in office.

History: En. Sec. 4369, Pol. C. 1895; re-en. Sec. 3005, Rev. C. 1907; re-en. Sec. 4769, R.C.M. 1921; Cal. Pol. C. Sec. 4163; re-en. Sec. 4769, R.C.M. 1935; R.C.M. 1947, 16-2623(part).

7-6-2119 through 7-6-2130 reserved.

7-6-2131. Fees of county treasurer. The county treasurer shall receive the sum of $3 for making and acknowledging a deed for property sold for delinquent taxes.

History: En. Sec. 1, p. 49, L. 1899; re-en. Sec. 3171, Rev. C. 1907; re-en. Sec. 4920, R.C.M. 1921; re-en. Sec. 4920, R.C.M. 1935; R.C.M. 1947, 25-234.

Part 22

General Provisions Related to Counties

7-6-2201. Fiscal year for counties. The fiscal year for county purposes commences on July 1 of each year and ends on June 30 of the following year.

History: En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921; re-en. Sec. 518, R.C.M. 1921; re-en. Sec. 518, R.C.M. 1935; amd. Sec. 1, Ch. 121, L. 1953; amd. Sec.

1, Ch. 84, L. 1955; amd. Sec. 2, Ch. 127, L. 1961; amd. Sec. 1, Ch. 175, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 59-701(part); amd. Sec. 4, Ch. 252, L. 1979.

7-6-2202. Duties of county clerk related to finance. (1) The county clerk must draw warrants on the county treasury in favor of all persons entitled thereto in payment:

(a) of all claims and demands chargeable against the county which have been legally examined, allowed, and ordered paid by the board of county commissioners;

(b) for all debts and demands against the county when the amounts are fixed by law and are not directed to be audited by some other person or tribunal.

(2) The county clerk must keep accounts current with the treasurer. When any person deposits with the county treasurer any money paid into the treasury, the county clerk shall be furnished by the treasurer with a duplicate of the receipt issued to the person, which duplicate receipt shall be filed in the office of the county clerk, and the county clerk shall charge the treasurer with the amount thereof.

(3) The county clerk must make the annual statement as prescribed in 7-6-2203.

History: En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; R.C.M. 1947, 16-2917(part); amd. Sec. 5, Ch. 252, L. 1979.

7-6-2203. Annual financial statement. (1) Within 40 days after the close of each fiscal year, the county clerk shall make out and present to the board of county commissioners and the department of administration a complete statement of the financial condition of the county. The statement must show:

(a) a detailed description of all of the resources and liabilities of the county and the book value of them;

(b) the amount of money received, showing the source of that revenue;

(c) the amount of money disbursed, with the purpose of disbursement;

(d) the operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits, and the balance at the end of the year;

(e) the assessed valuation of the real and personal property of the county;

(f) the rate of taxation and the amount of taxes delinquent for the preceding years; and

(g) such other items as the department of administration may prescribe.

(2) The statement shall be made out on the form designated by the department.

History: En. Sec. 778, 5th Div. Comp. Stat. 1887; amd. Sec. 4294, Pol. C. 1895; re-en. Sec. 2953, Rev. C. 1907; re-en. Sec. 4814, R.C.M. 1921; amd. Sec. 1, Ch. 2, L. 1925; amd. Sec. 1, Ch. 106, L. 1927; re-en. Sec. 4814, R.C.M. 1935; amd. Sec. 72, Ch. 348, L. 1974; amd. Sec. 31, Ch. 213, L. 1975; R.C.M. 1947, 16-2924; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in the introductory clause of (1) and in (1)(g).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-2203 . . . are transferred to the department of administration."

7-6-2204. Cash verification by county clerk. The county clerk and recorder, at the close of business each month, shall count the cash in the office of the county treasurer and shall retain a copy of the counting in his office.

History: En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R.C.M. 1921; Cal. Pol. C. Sec. 4165; amd. Sec. 1, Ch. 124, L. 1935; re-en. Sec. 4771, R.C.M. 1935; amd. Sec. 71, Ch. 348, L. 1974; amd. Sec. 1, Ch. 61, L. 1975; amd. Sec. 30, Ch. 213, L. 1975; R.C.M. 1947, 16-2625(2).

7-6-2205 through 7-6-2210 reserved.

7-6-2211. Authorization to conduct county business on a cash basis. (1) In case the total indebtedness of a county, lawful when incurred, exceeds the limit of 22.5% established in 7-7-2101 by reason of great diminution of taxable value, the county may conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the county out of the cash in the county treasury derived from its current revenue and under such restrictions and regulations as may be imposed by the board of county commissioners of the county by a resolution duly adopted and included in the minutes of the board.

(2) Nothing in this section restricts the right of the board to make the necessary tax levies for interest and sinking fund purposes, and nothing in this section affects the right of any creditor of the county to pursue any remedy now given him by law to obtain payment of his claim.

History: En. Sec. 1, Ch. 93, L. 1935; re-en. Sec. 4447.1, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1973; amd. Sec. 36, Ch. 566, L. 1977; R.C.M. 1947, 16-808; amd. Sec. 40, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Increased the limitation from 18% to 22.5% in (1).

Effective Date: Section 66, Ch. 614, L. 1981, provided: (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-6-2212. Authorization to maintain petty cash fund. (1) The board of county commissioners, with the approval of the department of administration, may set aside a sum of not less than $100 or more than $1,000 out of the general fund, which shall be known as a petty cash fund, for the purpose of paying incidental expenses such as freight, express, postage, and other similar items which must be paid in cash at time of delivery.

(2) (a) In counties having a county auditor, the county auditor is responsible for expenditures from the petty cash fund.

(b) In counties not having a county auditor, the county clerk is responsible for expenditures from the petty cash fund.

History: En. Sec. 4257, Pol. C. 1895; re-en. Sec. 2922, Rev. C. 1907; re-en. Sec. 4632, R.C.M. 1921; amd. Sec. 1, Ch. 141, L. 1925; re-en. Sec. 4632, R.C.M. 1935; amd. Sec. 69, Ch. 348, L. 1974; amd. Sec. 27, Ch. 213, L. 1975; R.C.M. 1947, 16-2049; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing

the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-2212 . . . are transferred to the department of administration."

7-6-2213. Report of fees received and money disbursed. It is the duty of all county officers, justices of the peace, and constables to make report in writing, under oath, to the board of county commissioners on the first Monday of March, June, September, and December, showing in detail all fees, emoluments, and compensation received and money disbursed by them in their official capacity during the quarter preceding the making of each report.

History: En. Sec. 4336, Pol. C. 1895; re-en. Sec. 2981, Rev. C. 1907; re-en. Sec. 4745, R.C.M. 1921; re-en. Sec. 4745, R.C.M. 1935; R.C.M. 1947, 16-2423.

7-6-2214. Examination of report. (1) It is the duty of the board to examine the reports.

(2) (a) If the report of an officer is found correct, the chairman of the board must write on the back of the same the words "Approved and ordered filed" and sign his name thereto.

(b) If any report is found not correct, it must be returned to the officer with a statement of its insufficiency, and the report must be corrected and returned to the board and then, if found correct, filed as aforesaid.

History: En. Sec. 4337, Pol. C. 1895; re-en. Sec. 2982, Rev. C. 1907; re-en. Sec. 4746, R.C.M. 1921; re-en. Sec. 4746, R.C.M. 1935; R.C.M. 1947, 16-2424.

7-6-2215. Repealed. Sec. 1, Ch. 135, L. 1979.

History: En. Sec. 4338, Pol. C. 1895; re-en. Sec. 2983, Rev. C. 1907; re-en. Sec. 4747, R.C.M. 1921; re-en. Sec. 4747, R.C.M. 1935; R.C.M. 1947, 16-2425.

7-6-2216. Repealed. Sec. 1, Ch. 135, L. 1979.

History: En. Sec. 4339, Pol. C. 1895; re-en. Sec. 2984, Rev. C. 1907; re-en. Sec. 4748, R.C.M. 1921; re-en. Sec. 4748, R.C.M. 1935; R.C.M. 1947, 16-2426.

7-6-2217. Administration of relief received from federal agencies. In any county where aid is received from the reconstruction finance corporation or any other similar agencies, the county commissioners of such county shall be authorized to employ the necessary help and incur such expenses as are necessary in the administration of such relief; and in so doing the board may appropriate such funds as are necessary from the general fund of said county. Such appropriation shall be held and deemed legal and valid notwithstanding the provisions of the budget act.

History: En. Sec. 1, Ch. 44, L. 1933; re-en. Sec. 4520.1, R.C.M. 1935; R.C.M. 1947, 16-1162.

7-6-2218. Appropriation of state and federal money by county. (1) The board of county commissioners of any county in Montana shall have the power and authority to appropriate, by formal resolution, money received from the federal or state government, regardless of the time the money is received. The expenditure of said funds shall be according to federal requirements specified in the federal act or state requirements specified in the state legislation. The money appropriated under this section may include federal revenue sharing funds granted to Montana conservation districts organized under Title 76, chapter 15.

(2) The resolution shall state the source of the money, the expenditure program for the funds, and the effective date of the appropriation.

History: En. 16-1185 by Sec. 1, Ch. 70, L. 1974; amd. Sec. 1, Ch. 75, L. 1975; R.C.M. 1947, 16-1185.

7-6-2219. Authorization to establish capital improvement fund. The governing body of any county in Montana may establish a capital improvement fund for the replacement and acquisition of property, plant, or equipment costing in excess of $5,000 with a life expectancy of 5 years or more, provided a capital improvement program has been formally adopted by said governing body.

History: En. 16-1186 by Sec. 1, Ch. 54, L. 1975; R.C.M. 1947, 16-1186.

7-6-2220. Levy for capital improvement fund. Money for the capital improvement fund is to be derived from the multiple levies authorized by statute and appropriated to the capital improvement fund. However, no more than 10% of the money derived from any one levy may be appropriated to the capital improvement fund.

History: En. 16-1187 by Sec. 2, Ch. 54, L. 1975; R.C.M. 1947, 16-1187.

7-6-2221. Limitations on capital improvement fund. The capital improvement fund may not exceed at any time a competent engineering estimate of the cost of the adopted capital improvement program. Money deposited in the fund must be expended within a 10-year period.

History: En. 16-1188 by Sec. 3, Ch. 54, L. 1975; R.C.M. 1947, 16-1188; amd. Sec. 6, Ch. 252, L. 1979.

Part 23

County Budget Law

7-6-2301. Construction of part. This part shall not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation now prescribed by existing law or acts amendatory thereof.

History: En. Sec. 9, Ch. 148, L. 1929; re-en. Sec. 4613.9, R.C.M. 1935; R.C.M. 1947, 16-1910; amd. Sec. 29, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "except 7-6-2351 and 7-6-2352" after "This part".

7-6-2302. Role of department of administration. The department of administration shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part, to define what expenditures are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information.

History: En. Sec. 8, Ch. 148, L. 1929; re-en. Sec. 4613.8, R.C.M. 1935; amd. Sec. 67, Ch. 348, L. 1974; amd. Sec. 26, Ch. 213, L. 1975; R.C.M. 1947, 16-1909; amd. Sec. 7, Ch. 252, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 30, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of administration" for "department of community affairs".

Chapter 575 deleted "except 7-6-2351 and 7-6-2352" after "this part".

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-2302 . . . are transferred to the department of administration."

7-6-2303. Violations. Any person violating any of the provisions of this part shall be guilty of a misdemeanor.

History: En. Sec. 10, Ch. 148, L. 1929; re-en. Sec. 4613.10, R.C.M. 1935; R.C.M. 1947, 16-1911; amd. Sec. 31, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "except 7-6-2351 and 7-6-2352" after "this part".

7-6-2304 through 7-6-2310 reserved.

7-6-2311. Filing of estimate of revenues and expenses with county clerk. (1) Before June 1 each year the county clerk and recorder shall notify in writing each county official in charge of an office, department, service, institution, or county-funded district court program of the county to file with the county clerk and recorder, before June 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation and of all expenditures required by the office, department, service, or institution for the next fiscal year.

(2) (a) The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for the board and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, from any special road or bridge fund, from any special highway fund, and from bond issues issued or authorized for the next fiscal year, together with the cost of that construction as computed by the county surveyor or, if for construction in charge of a special engineer, then by that engineer. The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be approved at an election to be held.

(b) The county surveyor and any special engineer shall prepare the estimates of cost of road and bridge construction for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

(c) The county treasurer shall prepare the estimates for interest and debt reduction.

(d) The county clerk and recorder shall prepare all other estimates which properly fall within the duties of his office.

(3) The estimates required in this section shall be submitted on forms provided by the county clerk and recorder and prescribed by the department of administration. The forms may only be varied or departed from with permission and approval of that department. Each of the officials shall file the estimates within the time and in the manner provided in the form and notice.

(4) In the absence or disability of an official, the duties required by this section or 7-6-2312 devolve upon the official or employee in charge of the office, department, service, or institution.

History: En. Sec. 1, Ch. 148, L. 1929; re-en. Sec. 4613.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1947; amd. Sec. 63, Ch. 348, L. 1974; amd. Sec. 22, Ch. 213, L. 1975; R.C.M. 1947, 16-1901(part); amd. Sec. 1, Ch. 405, L. 1979; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (3).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-2311 . . . are transferred to the department of administration."

7-6-2312. Penalty for noncompliance with filing requirements. (1) The county clerk shall withhold as a penalty from the salary of each official failing or refusing to file the estimates, $10 for each day of delay. The total penalty against any official may not exceed $50 in 1 year.

(2) The notice provided for in 7-6-2311 shall contain a copy of this penalty clause.

History: En. Sec. 1, Ch. 148, L. 1929; re-en. Sec. 4613.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1947; amd. Sec. 63, Ch. 348, L. 1974; amd. Sec. 22, Ch. 213, L. 1975; R.C.M. 1947, 16-1901(part).

7-6-2313. Preparation of expenditure program and information on sources of revenue. (1) From those estimates the county clerk and recorder shall prepare a tabulation showing the complete expenditure program of the county for the current fiscal year and the sources of revenue by which it is to be financed.

(2) The tabulation shall set forth:

(a) the estimated receipts from all sources other than taxation for each office, department, service, institution, or district court program funded by the county for the current fiscal year;

(b) the actual receipts for the last completed fiscal year;

(c) the surplus or unencumbered treasury balances at the close of that last fiscal year;

(d) the amount necessary to be raised by taxation;

(e) the estimated expenditure for each office, department, service, institution, or district court program funded by the county for the current fiscal year;

(f) the actual expenditures for the last completed fiscal year;

(g) all contracts or other obligations which will affect the current year revenues;

(h) the total amount of emergency warrants issued during the preceding fiscal year, with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 2, Ch. 148, L. 1929; re-en. Sec. 4613.2, R.C.M. 1935; amd. Sec. 64, Ch. 348, L. 1974; amd. Sec. 23, Ch. 213, L. 1975; R.C.M. 1947, 16-1902(1), (4); amd. Sec. 2, Ch. 405, L. 1979.

7-6-2314. Classification of estimates, appropriations, and expenditures. (1) In the tabulation required by 7-6-2313, the estimates, appropriations, and expenditures shall be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held later.

(2) (a) Within the general class of salaries and wages, each salary shall be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of such special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor shall be set forth.

(b) Expenditures under the general class of maintenance and operation shall be classified according to a standard classification to be established by the department of administration.

(c) Expenditures for capital outlay shall set forth and describe each object of expenditure separately.

(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or which cannot properly be assigned to any of the general classes shall be set forth and itemized in detail.

History: En. Sec. 2, Ch. 148, L. 1929; re-en. Sec. 4613.2, R.C.M. 1935; amd. Sec. 64, Ch. 348, L. 1974; amd. Sec. 23, Ch. 213, L. 1975; R.C.M. 1947, 16-1902(2), (3); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (2)(b).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-2314 . . . are transferred to the department of administration."

7-6-2315. Consideration of tabulation by county commissioners — preparation of preliminary budget. (1) The tabulation shall be submitted to the county commissioners by the county clerk and recorder on or before the first Monday of July.

(2) Upon receipt thereof, the board of county commissioners shall immediately consider the budget in detail and shall, on or before the second Monday of July, make any revisions, reductions, additions, or changes that they consider advisable. The tabulation, with any revisions, reductions, additions, or changes, is the preliminary budget for the fiscal year which it is intended to cover.

(3) Upon completion of the budget, the county clerk shall immediately transmit one copy of it to the department of administration and one copy to the department of revenue.

History: En. Sec. 3, Ch. 148, L. 1929; re-en. Sec. 4613.3, R.C.M. 1935; amd. Sec. 2, Ch. 48, L. 1947; amd. Sec. 65, Ch. 348, L. 1974; amd. Sec. 24, Ch. 213, L. 1975; R.C.M. 1947, 16-1903(part); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (3).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing

the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-2315 . . . are transferred to the department of administration."

7-6-2316. Notice of hearing on preliminary budget. (1) The board of county commissioners shall then have a notice published stating that:

(a) the board has completed its preliminary county budget for the current fiscal year;

(b) the budget is open to inspection in the office of the county clerk and recorder;

(c) the board will meet on the Wednesday before the second Monday in August to fix the final budget and make appropriations, stating the time and place of the meeting; and

(d) any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The notice shall be published at least one time in a newspaper of general circulation in the county.

History: En. Sec. 3, Ch. 148, L. 1929; re-en. Sec. 4613.3, R.C.M. 1935; amd. Sec. 2, Ch. 48, L. 1947; amd. Sec. 65, Ch. 348, L. 1974; amd. Sec. 24, Ch. 213, L. 1975; R.C.M. 1947, 16-1903(part); amd. Sec. 8, Ch. 252, L. 1979.

7-6-2317. Hearing on preliminary budget. (1) On the Wednesday before the second Monday in August, the county commissioners shall meet at the time and place designated in the notice provided for in 7-6-2316, at which time any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The hearing shall be continued from day to day and shall be concluded and the budget approved and adopted on the second Monday in August, before the fixing of the tax levies by the board.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(1); amd. Sec. 9, Ch. 252, L. 1979.

7-6-2318. Determination of projected fund cash flow following hearing. (1) Upon the conclusion of the hearing, the board shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources except the taxation of property. In so doing, the board may not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during a preceding fiscal year.

(2) The board shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn for the expenditures authorized. There may not be added to the amount to be appropriated and authorized to be spent for an item or to the total amount appropriated and authorized to be spent from any fund any amount or percentage because of anticipated loss of revenue by reason of the nonpayment of taxes levied for that fiscal year. The total expenditures authorized to be made from any fund, including the reserve added to them, may not exceed the aggregate of:

(a) the cash balance in the fund at the close of the preceding fiscal year;

(b) the amount of estimated revenues to accrue to the fund; and

(c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(2).

7-6-2319. Determination of fund requirements to be met by tax levy. (1) Following the determinations required by 7-6-2318, the board shall determine the amount to be raised by tax levy for each fund by adding the cash balance in the fund at the close of the preceding fiscal year and the amount of the estimated revenues to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for the fund by tax levy during the current fiscal year.

(2) The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount which may be so added to any fund as the reserve may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants.

(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(3).

7-6-2320. Final budget — approval and adoption. (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation or expenditure is authorized and the fund out of which it is to be paid, shall set out:

(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in the fund at the close of the preceding fiscal year;

(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund by tax levy during the current fiscal year.

(2) The board shall then by resolution approve and adopt the budget as finally determined and enter the budget at length in the official minutes of the board.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex.

L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(5).

7-6-2321. Fixing of tax levy. (1) On the second Monday in August and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. The taxable valuation of the county for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund. Each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget, without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy.

(2) The tax levy shall be made in the manner provided by 15-10-201.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(6).

7-6-2322. Budget and tax levies to be supplied to department of administration. (1) The county clerk and recorder shall, not later than September 15, forward a full and detailed copy of the final budget, together with the tax levies, to the department of administration.

(2) If a county clerk and recorder fails to forward a copy of the budget to the department within that time, that department shall, before October 1, notify the board of county commissioners of the county that a copy of the budget has not been forwarded by the county clerk and recorder. The board must then withhold the county clerk and recorder's salary for September until the county clerk and recorder files with the board a receipt from the department showing the receipt of a copy.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(7); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-2322 . . . are transferred to the department of administration."

7-6-2323. Effect of exceeding budget appropriations — personal liability. (1) Expenditures made, liabilities incurred, or warrants issued in excess of any of the detailed budget appropriations, as originally determined or as thereafter revised by transfer as provided in this part, shall not be a liability of the county, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond.

(2) (a) The board of county commissioners shall not approve any claim and the county clerk and recorder shall not issue any warrant for any expenditure in excess of said detailed budget appropriations, as finally adopted or as revised under the provisions of this part, except upon an order

of a court of competent jurisdiction or for an emergency as hereinafter provided. Any county commissioner or commissioners or county clerk and recorder approving any claim or issuing any warrant in excess of any such budget appropriation except as above provided shall forfeit to the county fourfold the amount of such claim or warrant.

(b) The amount forfeited under subsection (2)(a) shall be recovered in an action against such county commissioner or commissioners or county clerk and recorder or all of them and their several sureties on their official bonds. It shall be the duty of the county attorney of such county to bring an action therefor in the name of the county.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2324. Limitations on appropriations after budget adopted. (1) The estimates of expenditures, itemized and classified as required in 7-6-2313 and 7-6-2314 and as finally fixed and adopted by said board of county commissioners shall constitute the appropriations for the county for the fiscal year intended to be covered thereby.

(2) Except as provided in 3-5-404, 7-6-2325, and 7-31-2101, the county commissioners and every other county official, including judges of the district court, shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part); amd. Sec. 1, Ch. 275, L. 1979.

7-6-2325. Transfer of appropriations within and among expenditure classes. (1) Upon a resolution adopted by the board of county commissioners at a regular or special meeting and entered upon its minutes, transfers or revisions within the general class of salaries and wages and of maintenance and support may be made, provided that no salary shall be increased above the amount appropriated therefor.

(2) (a) Except as provided in subsection (2)(b), transfers between the general classes provided in 7-6-2314 shall not be permitted.

(b) In the case of appropriations to be expended from county road or bridge funds, special road district funds, or any special highway fund, any transfer may be made between or among the general classes of:

(i) salaries and wages;

(ii) maintenance and support; and

(iii) capital outlay.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2326. Transfer of cash balance in fund at close of fiscal year. (1) After a public hearing, if the cash balance remaining at the end of a fiscal year in any of the several county funds except the school fund, exceeds the amount to be budgeted to that fund, the excess may be transferred to other funds as the county commissioners consider to be in the best interest of the county.

(2) Notice of the hearing must be given not less than 30 days prior to the hearing by publication in a newspaper of general circulation in the county

and by posting in five public places. The notice must state the date, time, and place of the hearing and state generally the purpose and proposed use of the funds.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(4).

7-6-2327. Use of bond proceeds and borrowed money. (1) Money received from borrowing shall be used for no other purpose than that for which borrowed, except that if any surplus remains after the accomplishment of the purpose for which borrowed, it shall be used to redeem the county debt.

(2) Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2328. Restriction on tax-financed expenditures if voter approval of tax levy required. Where any expenditure program is to be financed from a tax levy required to be authorized and approved at an election, no expenditure shall be made or obligation incurred thereunder until such levy is so authorized and approved.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2329. Procedure when unpaid and outstanding warrants exist at end of fiscal year. (1) When at the end of any fiscal year any county has outstanding registered emergency warrants against any fund issued by reason of any emergency budget or budgets and is without sufficient cash in such fund to pay the same with interest thereon, the board of county commissioners must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation sufficient to pay such warrants with the interest thereon.

(2) When at the end of any fiscal year any county has warrants outstanding and registered against any fund, other than warrants issued by reason of any emergency budget or budgets, and is without sufficient cash in such fund to pay the same with interest thereon, the board must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation to pay such warrants or a substantial part thereof with the interest thereon. The amount of such appropriation shall be fixed and determined by the board, but must, in any event, be at least 10% of the amount which might be collected by a maximum levy for such fund if the amount of such outstanding and registered warrants, with interest thereon, equals or exceeds such amount.

(3) None of the provisions of this section shall be construed as authorizing a levy to be made for any fund in excess of the limitation prescribed by existing law or acts hereafter enacted amendatory thereof.

History: En. Sec. 1, Ch. 170, L. 1943; re-en. Sec. 4613.4A, R.C.M. 1935; R.C.M. 1947, 16-1905.

7-6-2330. Lapse of appropriation. (1) Subject to the provisions of subsection (2), all appropriations, other than appropriations for incompleted improvements in progress of construction, shall lapse at the end of the fiscal year.

(2) The appropriation accounts shall remain open for a period of 30 days after the end of the fiscal year for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired, all appropriations, except as hereinbefore provided regarding uncompleted improvements, shall become null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the ensuing budget.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(8).

7-6-2331. Clerk's report concerning expenditures, liabilities, and appropriations — auditor's report. (1) On the first Monday in each month, the county clerk and recorder shall submit to the board of county commissioners a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each appropriation. He shall also set forth the receipts from taxes and in detail the receipts from all other sources by each fund for the same period.

(2) In counties having county auditors, the county auditor, on the last business day of each month, shall furnish the county clerk and recorder with a statement showing the total amount of liabilities incurred against each budget appropriation for which warrants have not been issued up to the close of said business day.

History: En. Sec. 7, Ch. 148, L. 1929; re-en. Sec. 4613.7, R.C.M. 1935; R.C.M. 1947, 16-1908.

7-6-2332 through 7-6-2340 reserved.

7-6-2341. Procedure to make expenditures and incur liabilities in case of serious emergencies. Upon the happening of an emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection; for the immediate preservation of order or of public health; for the restoration of a condition of usefulness of which has been destroyed by accident; for the relief of a stricken community overtaken by calamity; in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county; or to meet mandatory expenditures required by law, the county commissioners may, upon adoption by unanimous vote of all members present at any meeting (the time and place of which all members shall have had reasonable notice) of a resolution stating the facts constituting the emergency and upon entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part).

7-6-2342. Procedure to make expenditures and incur liabilities in case of other emergencies. (1) In a public emergency other than those described in 7-6-2341 and which could not reasonably have been foreseen at the time of making the budget, the board of county commissioners, by unanimous vote of the members present at any meeting (the time and place of which all the commissioners shall have had reasonable notice), shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet the emergency.

(2) The board shall publish the resolution, together with a notice that a public hearing will be held on the resolution at the time and place designated in the notice, once in the official newspaper of the county and if there is none, then in a newspaper of general circulation in the county. The hearing may not be less than 1 week after the date of publication.

(3) Any taxpayer or resident of the county may appear at the hearing and be heard for or against the expenditure of money for the alleged emergency.

(4) (a) Upon the conclusion of the hearing, if the commissioners approve the emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the board present at the meeting, an order setting forth the facts constituting the emergency, together with the amount of expenditure authorized therefor by them. Subject to the limitations of subsection (4)(b), the order is lawful authorization for them to expend such amount, but no more, for such purpose.

(b) No expenditure may be made or liability incurred pursuant to the order until 5 days, exclusive of the day of entry of the order, elapse.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 10, Ch. 252, L. 1979.

7-6-2343. Appeal of order for certain emergency expenditures. (1) During the 5-day period provided by 7-6-2342(4)(b), any taxpayer or resident of the county feeling aggrieved by the order issued pursuant to 7-6-2342(4) may appeal therefrom to the district court for such county by filing with the clerk of the court a verified petition, a copy of which has theretofore been served upon the county clerk and recorder of the county as the clerk of the board of county commissioners. The petition shall set forth in detail the objections of the petitioner to the order, giving reasons why the emergency does not exist.

(2) Until final determination of the matter by the court, the service and filing of the petition operates to suspend the emergency order and the authority to make any expenditure or incur any liability thereunder.

(3) Upon the filing of the petition, the court shall immediately fix a time for hearing the petition, which time shall be at the earliest convenient time. At the hearing the court shall hear the matter de novo and may take such testimony as it considers necessary. The court's proceedings shall be summary and informal, and its determination as to whether an emergency such as is contemplated within the meaning and provisions of this part exists or not and whether the expenditure authorized by the order is excessive or not is final.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 11, Ch. 252, L. 1979.

7-6-2344. Limitation on amount of emergency expenditures and liabilities — election. (1) Unless the excess above the sums listed in subsections (1)(a), (1)(b), and (1)(c) is first authorized by a majority of the electors of the county, voting at a general or special election, the aggregate total of all expenditures made or liabilities incurred in any fiscal year to meet emergencies, other than those caused by fire, flood, explosion, earthquake, epidemic, riot, or insurrection, may not exceed:

(a) $25,000 in counties of class 1, 2, 3, or 4;

(b) $15,000 in counties of class 5 or 6; and

(c) $7,500 in counties of class 7.

(2) The question of authorizing the excess expenditures shall be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Shall the board of county commissioners of .... County, Montana, be authorized to make additional expenditures and incur additional liabilities in the amount of $.... over and above the sum of $.... to meet an emergency caused by .....

☐ YES

☐ NO

(3) The total of all emergency budgets and appropriations made therein in any one year to be paid from the county poor fund may not exceed the amount which would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy authorized by law to be made for such fund, computed against the taxable value of the property subject to such levy as shown by the last completed assessment roll of the county.

History: **En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 12, Ch. 252, L. 1979; amd. Sec. 387, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-6-2345. Use of emergency warrants. (1) All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures. The county treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose. If at any time there shall not be sufficient money available in such fund or funds to pay such warrants, then such warrants shall be registered, bear interest, and be called in for payment in the manner provided by law for other county warrants.

(2) The county clerk and recorder shall include in his annual tabulation to be submitted to the board of county commissioners the total amount of emergency warrants issued during the preceding fiscal year. Subject to the provisions of subsection (3), the county commissioners shall, in their tax levies, include a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same.

(3) (a) No levy shall be made for any fund in excess of the levy authorized by law to be made therefor.

(b) The board may submit the question of funding such emergency warrants at any election as provided by law, and if at any such election the issuing of such funding bonds be authorized, it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(6), (7).

7-6-2346 through 7-6-2350 reserved.

7-6-2351. District court budget. (1) As soon as the preliminary budget provided for in 7-6-2315 has been agreed upon by the governing body, a copy shall be transmitted to the district court. At any time before the final adoption of the budget, the district court may make recommendations for changes in any part of the budget relating to the court considered necessary for the court to discharge its obligations under the law.

(2) No part of the district court fund may be used for any purpose other than the costs and expenses described in 7-6-2511, and no part may be used for the construction or improvement of any county building.

History: En. Sec. 1, Ch. 692, L. 1979.

Compiler's Comments

Codification Instruction: Section 32, Ch. 575, L. 1981, provided: "Sections 7-6-2351 and 7-6-2352, MCA, (sec. 1(2), (3), and sec. 2, Ch. 692, L. 1979), are intended to be an integral part of Title 7, chapter 6, part 23, and the provisions of Title 7, chapter 6, part 23, apply to sections 7-6-2351 and 7-6-2352, MCA."

Commissioner change: The Code Commissioner has rephrased subsection (2) to add a reference to 7-6-2511. The change clarifies the relationship between the two sections, which were enacted in a single section by Ch. 692, L. 1979.

Sunset provision: Sec. 3, Ch. 692, L. 1979, provided: "This act and the authority granted therein shall terminate June 30, 1983."

7-6-2352. State grants to district courts. (1) The department of administration shall make grants to the governing body of a county for the district courts for assistance, as provided in this section. The grants are to be made from funds appropriated to the department for that purpose. If the department of administration approves grants in excess of the amount appropriated, each grant shall be reduced an equal percentage so the appropriation will not be exceeded.

(2) The governing body of a county may apply to the department of administration for a grant by filing a written report by July 31, for the previous fiscal year stating that the following conditions have occurred or will occur:

(a) that the court will not be able to meet its statutory obligations with the funds authorized under the county budget, because of expenses exceeding the sum derived from the mill levy provided for in 7-6-2511 arising from litigation in either civil or criminal matters, not including building, capital, and library maintenance, replacement, and acquisition, but including the costs associated with:

(i) the impaneling and maintenance of juries;

(ii) the appearance of witnesses;

(iii) the fees and litigation-related expenses of attorneys appointed by a district court;

(iv) transcript prepared at the direction of a district court at county expense;

(v) salaries and fees of court reporters;

(vi) psychological and medical treatment or evaluations ordered by a district court at county expense;

(vii) the actual and necessary expenses of travel as limited by law for:

(A) jurors;

(B) witnesses;

(C) court reporters;

(D) defendants in criminal cases who are in custody;

(E) juveniles under the supervision of a district court; or

(F) law enforcement or probation officers acting in furtherance of a district court order; and

(viii) other, similar expenses created by and required for the conduct of and preparation for a trial in district court;

(b) that all expenditures from the district court fund have been lawfully made;

(c) that no transfers from the district court fund have been or will be made to any other fund;

(d) that no expenditures have been made from the district court fund that are not specifically authorized by 7-6-2511 and 7-6-2351; and

(e) any other information required by the department of administration.

(3) The department of administration shall give notice to the district court and the county governing body of its intention to allow grants by August 31 for the previous fiscal year.

(4) Within 10 days of receiving notice from the department of administration that a grant will be made, the district court shall adopt a budget and transmit it to the county governing body.

(5) After receiving notice of the county governing body's approval of the budget, the department of administration shall cause a warrant to be issued to the treasurer of the county in which the district court is located for the total amount stated in the approved budget.

(6) The grant received by the county shall be placed in a fund account to be kept separate from the district court fund.

(7) After depleting the district court fund, the county treasurer may make disbursements from the fund account. At the close of its fiscal year, the county treasurer shall return to the department of administration any amounts remaining in the fund account.

History: En. Sec. 2, Ch. 692, L. 1979; amd. Sec. 1, Ch. 465, L. 1981.

Compiler's Comments

1981 Amendment: In (1), changed "may" to "shall" and deleted "emergency" before "assistance" in the first sentence, and added the last sentence; in (2), deleted "when the following conditions occur" after "for a grant", inserted "By July 31, for the previous fiscal year" before "stating", inserted "that the following conditions have occurred or will occur" after "stating", and substituted language after "authorized in the county budget" in (2)(a) for "(b) that all lawful sources of income to the district court fund have been exhausted"; in (3), deleted "Within 10 days of receipt of the application" before "The department", and substituted "grants by August 31 for the previous fiscal year" for "the grant"; in (4) and (5), deleted "emergency" before "budget"; in (6) and (7), deleted "emergency" before "fund"; and made minor changes in grammar.

Effective Date: Section 2, Ch. 465, L. 1981, provided: "This act is effective July 1, 1981."

Codification Instruction: Section 32, Ch. 575, L. 1981, provided: "Sections 7-6-2351 and 7-6-2352, MCA, (sec. 1(2), (3), and sec. 2, Ch. 692, L. 1979), are intended to be an integral part of Title 7, chapter 6, part 23, and the provisions of Title 7, chapter 6, part 23, apply to sections 7-6-2351 and 7-6-2352, MCA."

Sunset Provision: Sec. 3, Ch. 692, L. 1979, provided: "This act and the authority granted therein shall terminate June 30, 1983."

Part 24

County Auditor and Claims Against County

7-6-2401. Creation of office of county auditor. (1) Except as provided in subsection (2), the office of county auditor exists in all counties of the first, second, third, or fourth class.

(2) The provisions of 7-6-2401 through 7-6-2413 do not apply to counties having a population of less than 15,000 persons according to the most recent federal census.

History: En. Sec. 1, p. 227, L. 1891; re-en. Sec. 4560, Pol. C. 1895; re-en. Sec. 3100, Rev. C. 1907; re-en. Sec. 4824, R.C.M. 1921; amd. Sec. 1, Ch. 117, L. 1923; re-en. Sec. 4824, R.C.M. 1935; amd. Sec. 1, Ch. 52, L. 1961; R.C.M. 1947, 16-3201(part); amd. Sec. 13, Ch. 252, L. 1979.

7-6-2402. Optional election for county auditor. There may be elected in each county of the classes named in 7-6-2401 some person to serve as county auditor.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; re-en. Sec. 4825, R.C.M. 1935; amd. Sec. 3, Ch. 423, L. 1971; amd. Sec. 10, Ch. 100, L. 1973; amd. Sec. 1, Ch. 187, L. 1973; R.C.M. 1947, 16-3203(part); amd. Sec. 14, Ch. 252, L. 1979.

7-6-2403. Qualifications of county auditor. No person is eligible to serve in the office of county auditor of any county who is not of voting age and who has not been a resident of the county for which he is elected or appointed for at least 2 years preceding his election or appointment.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; re-en. Sec. 4825, R.C.M. 1935; amd. Sec. 3, Ch. 423, L. 1971; amd. Sec. 10, Ch. 100, L. 1973; amd. Sec. 1, Ch. 187, L. 1973; R.C.M. 1947, 16-3203(part); amd. Sec. 15, Ch. 252, L. 1979.

7-6-2404. Oath of office. Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such constitutional oath as is required of other county officers.

History: En. Sec. 3, p. 228, L. 1891; re-en. Sec. 4562, Pol. C. 1895; re-en. Sec. 3102, Rev. C. 1907; re-en. Sec. 4826, R.C.M. 1921; re-en. Sec. 4826, R.C.M. 1935; amd. Sec. 9, Ch. 68, L. 1967; amd. Sec. 3, Ch. 7, L. 1973; R.C.M. 1947, 16-3204.

7-6-2405. Location of office. The county auditor shall keep his principal office at the county seat of the county for which he shall have been elected or appointed.

History: En. Sec. 4, p. 228, L. 1891; re-en. Sec. 4563, Pol. C. 1895; re-en. Sec. 3103, Rev. C. 1907; re-en. Sec. 4827, R.C.M. 1921; re-en. Sec. 4827, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1965; R.C.M. 1947, 16-3205(part).

7-6-2406. Compensation of auditor. The county auditor receives the annual compensation provided by law, payable monthly by warrants drawn on the treasury of the county, and shall receive no other compensation or emolument whatsoever for any service rendered or performed by him, except actual expenses for living and traveling whenever the duties of his office require his presence at any place in the county other than the county seat, and then only after the travel has been ordered and advised by the board of county commissioners.

History: **En. Sec. 4, p. 228, L. 1891; re-en. Sec. 4563, Pol. C. 1895; re-en. Sec. 3103, Rev. C. 1907; re-en. Sec. 4827, R.C.M. 1921; re-en. Sec. 4827, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1965; R.C.M. 1947, 16-3205(part); amd. Sec. 16, Ch. 252, L. 1979.**

7-6-2407. Auditing and investigation of claims. (1) It shall be the duty of persons holding claims against any county having a county auditor to present the same to the county auditor, whose duty it shall be to audit the same. The county auditor shall also investigate and examine all claims presented to him and report the same with his finding to the board of county commissioners at their regular session after such investigation shall have been completed, with his approval or disapproval endorsed thereon, and he shall keep a complete record of all such claims and of his investigations and examinations of the same in a book kept for that purpose.

(2) In all counties having a county auditor:

(a) all bills, claims, accounts, or charges for materials of any kind or nature that may be purchased by and on behalf of the county by any of the county officers or contracted for by the county commissioners shall be investigated, examined, and inspected by the county auditor, who shall endorse his approval or disapproval thereon before any warrant for the payment of the same can be drawn;

(b) no claim against the county shall be paid or warrant drawn therefor unless the same shall have the approval of the county auditor; provided, however, that the judge of the district court of the county where any claim has been disapproved by the county auditor may order the payment of the same.

History: **En. Sec. 7, p. 229, L. 1891; re-en. Sec. 4566, Pol. C. 1895; re-en. Sec. 3106, Rev. C. 1907; re-en. Sec. 4830, R.C.M. 1921; re-en. Sec. 4830, R.C.M. 1935; R.C.M. 1947, 16-3208.**

7-6-2408. Auditor's powers related to investigations. (1) The county auditors are hereby authorized to administer any oath or affirmation rendered necessary to the performance of the duties of their respective offices.

(2) The county auditors shall have power to issue process and compel the attendance of witnesses before them and examine any matter they may deem necessary. Any witness attending before such auditor shall receive the same fees and mileage as witnesses attending before justices of the peace in trial or examinations in criminal cases.

History: **En. Sec. 5, p. 228, L. 1891; re-en. Sec. 4564, Pol. C. 1895; re-en. Sec. 3104, Rev. C. 1907; re-en. Sec. 4828, R.C.M. 1921; re-en. Sec. 4828, R.C.M. 1935; R.C.M. 1947, 16-3206.**

7-6-2409. Examination of county books and accounts. (1) It is the duty of the county auditor to examine the books and accounts of the county treasurer, the county clerk and recorder, the sheriff, the clerk of the district court, and all other county and township officers within 15 days prior to the first regular session of the board of county commissioners in March, June, September, and December of each year unless a longer time is granted to the auditor by the board.

(2) The quarterly report shall contain a full and complete statement of the money received and disbursed by each of the officers since the last examination and report. For the purpose of this section, the county auditor has free access to all books and papers in each of the offices.

History: En. Sec. 9, p. 230, L. 1891; re-en. Sec. 4568, Pol. C. 1895; re-en. Sec. 3108, Rev. C. 1907; re-en. Sec. 4832, R.C.M. 1921; re-en. Sec. 4832, R.C.M. 1935; R.C.M. 1947, 16-3210; amd. Sec. 17, Ch. 252, L. 1979.

7-6-2410. Maintenance of records. The county auditor shall carefully preserve all documents, books, records, and other papers required to be kept in his office. Each county auditor, on going out of office, shall deliver over to his successor in office all documents, books, records, and property in his hands belonging to the county.

History: En. Sec. 6, p. 229, L. 1891; re-en. Sec. 4565, Pol. C. 1895; re-en. Sec. 3105, Rev. C. 1907; re-en. Sec. 4829, R.C.M. 1921; re-en. Sec. 4829, R.C.M. 1935; R.C.M. 1947, 16-3207.

7-6-2411. List of claims allowed or rejected. The county clerk and recorder shall return to the county auditor, within 10 days after the adjournment of each session of the board of county commissioners, a list of the claims allowed or rejected, either in whole or in part, by them. This list shall be recorded by the auditor in a book kept for that purpose and carefully preserved in his office.

History: En. Sec. 8, p. 230, L. 1891; re-en. Sec. 4567, Pol. C. 1895; re-en. Sec. 3107, Rev. C. 1907; re-en. Sec. 4831, R.C.M. 1921; re-en. Sec. 4831, R.C.M. 1935; R.C.M. 1947, 16-3209.

7-6-2412. Other duties of auditor. (1) Subject to the requirements of subsection (2), the county auditor shall also perform such other duties, clerical or otherwise, as he may be directed to perform by the county commissioners.

(2) A reasonable amount of time must be allowed the county auditor for the performance of the duties definitely set forth in this part.

History: En. Sec. 11, p. 231, L. 1891; re-en. Sec. 4570, Pol. C. 1895; re-en. Sec. 3110, Rev. C. 1907; re-en. Sec. 4834, R.C.M. 1921; re-en. Sec. 4834, R.C.M. 1935; R.C.M. 1947, 16-3212.

7-6-2413. Limitation on number of deputy county auditors. The whole number of deputies allowed to county auditors must not exceed one in counties of the first, second, and third classes.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part).

7-6-2414 through 7-6-2420 reserved.

7-6-2421. Presentation of claims against county. (1) No account may be allowed by the board unless the same is made out in separate items, with the nature of each item stated. If the claim is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such services must be stated. No account must be necessarily passed upon by the board unless made out as prescribed in this section and filed by the clerk prior to the session at which it is asked to be heard.

(2) Every claim against the county, except claims arising from injury to a person or property, which are limited under provisions of Title 2, chapter

9, parts 1 through 3, as amended, must be presented within 1 year after the last item accrued.

(3) No county officer may, except for his own service, present any claim, account, or demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(4) Money deposited in the county treasury pursuant to former section 16-2616, R.C.M. 1947, and not otherwise disposed of shall be transferred by the county treasurer to the state treasurer for deposit in the agency fund provided for in Title 72, chapter 14, part 2. The county treasurer may deduct the fees and expenses of the coroner and the county prior to transferring the money.

History: Ap. p. Sec. 4287, Pol. C. 1895; re-en. Sec. 2946, Rev. C. 1907; re-en. Sec. 4609, R.C.M. 1921; Cal. Pol. C. Sec. 4073; re-en. Sec. 4609, R.C.M. 1935; Sec. 16-1807, R.C.M. 1947; Ap. p. Sec. 23, p. 503, Bannack Stat.; re-en. Sec. 23, p. 437, Cod. Stat. 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887; amd. Sec. 4286, Pol. C. 1895; re-en. Sec. 2945, Rev. C. 1907; re-en. Sec. 4605, R.C.M. 1921; Cal. Pol. C. Sec. 4072; re-en. Sec. 4605, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1957; amd. Sec. 2, Ch. 234, L. 1977; Sec. 16-1802, R.C.M. 1947; Ap.p. Sec. 4285, Pol. C. 1805; re-en. Sec. 2944, Rev. C. 1907; re-en. Sec. 4604, R.C.M. 1921; Cal. Pol. C. Sec. 4071; re-en. Sec. 4604, R.C.M. 1935; Sec. 16-1801, R.C.M. 1947; Ap.p. Sec. 4366, Pol. C. 1895; re-en. Sec. 3002, Rev. C. 1907; re-en. Sec. 4766, R.C.M. 1921; Cal. Pol. C. Sec. 4160; re-en. Sec. 4766, R.C.M. 1935; Sec. 16-2617, R.C.M. 1947; R.C.M. 1947, 16-1801(part), 16-1802, 16-1807, 16-2617; amd. Sec. 1, Ch. 225, L. 1979; amd. Sec. 18, Ch. 252, L. 1979.

7-6-2422. Opposition to claims. Any resident or taxpayer of the county may appear before the board and oppose the allowance of any claim or demand made against the county.

History: En. Sec. 4285, Pol. C. 1805; re-en. Sec. 2944, Rev. C. 1907; re-en. Sec. 4604, R.C.M. 1921; Cal. Pol. C. Sec. 4071; re-en. Sec. 4604, R.C.M. 1935; R.C.M. 1947, 16-1801(part); amd. Sec. 19, Ch. 252, L. 1979.

7-6-2423. Procedure for claims by county commissioners. All claims against the county presented by members of the board for per diem and mileage or other service rendered by them must be verified as other claims and must state that the service has been actually rendered.

History: En. Sec. 4293, Pol. C. 1895; re-en. Sec. 2952, Rev. C. 1907; re-en. Sec. 4607, R.C.M. 1921; Cal. Pol. C. Sec. 4082; re-en. Sec. 4607, R.C.M. 1935; R.C.M. 1947, 16-1805.

7-6-2424. Appeal of decision concerning claim. (1) Whenever a claim against a county is disallowed in whole or in part or whenever any taxpayer or resident of the county is not satisfied with any allowance made by the board, the claimant, taxpayer, or resident may appeal from the decision of the board to the district court for the county by causing a written notice of appeal to be served on the clerk of the board within 30 days after the making of the decision or allowance and executing a bond to the county, with surety to be approved by the clerk of the board, conditioned to prosecute the appeal to effect and to pay all costs that may be adjudged against the appellant.

(2) The clerk of the board, upon an appeal being taken, must immediately give notice thereof to the county attorney and must make out a return of the proceedings in the matter before the board, with its decision thereon, and file the same, together with the bond and all the papers therein in his possession, with the clerk of the district court.

(3) The appeal must be entered, tried, and determined the same as appeals from justices' courts, and costs are awarded in like manner.

History: (1)En. Sec. 25, p. 503, Bannack Stat.; re-en. Sec. 25, p. 437, Cod. Stat. 1871; amd. Sec. 2, p. 63, L. 1874; re-en. Sec. 359, 5th Div. Rev. Stat. 1879; re-en. Sec. 764, 5th Div. Comp. Stat. 1887; amd. Sec. 4288, Pol. C. 1895; re-en. Sec. 2947, Rev. C. 1907; re-en. Sec. 4610, R.C.M. 1921; Cal. Pol. C. Sec. 4075; re-en. Sec. 4610, R.C.M. 1935; Sec. 16-1808, R.C.M. 1947; (2), (3)En. Sec. 26, p. 504, Bannack Stat.; re-en. Sec. 26, p. 437, Cod. Stat. 1871; re-en. Sec. 360, 5th Div. Rev. Stat. 1879; re-en. Sec. 765, 5th Div. Comp. Stat. 1887; amd. Sec. 4289, Pol. C. 1895; re-en. Sec. 2948, Rev. C. 1907; re-en. Sec. 4611, R.C.M. 1921; re-en. Sec. 4611, R.C.M. 1935; Sec. 16-1809, R.C.M. 1947; R.C.M. 1947, 16-1808, 16-1809; amd. Sec. 20, Ch. 252, L. 1979.

7-6-2425. Auditing of county charges. Accounts for county charges of every description must be presented to the board of county commissioners to be audited as prescribed in 7-6-2421, 7-6-2429, and 7-6-2430.

History: En. Sec. 4680, Pol. C. 1895; re-en. Sec. 3198, Rev. C. 1907; re-en. Sec. 4951, R.C.M. 1921; Cal. Pol. C. Sec. 4343; amd. Sec. 1, Ch. 19, L. 1935; re-en. Sec. 4951, R.C.M. 1935; R.C.M. 1947, 16-3801.

7-6-2426. Enumeration of county charges. The following are county charges:

(1) charges incurred against the county by virtue of any provision of this title;

(2) one-half of the salary of the county attorney and all expenses necessarily incurred by him in criminal cases arising within the county;

(3) the salary and actual expenses for traveling, when on official duty, allowed by law to sheriffs and the compensation allowed by law to constables for executing process on persons charged with criminal offenses;

(4) the board of prisoners confined in jail;

(5) the sums required by law to be paid to grand and trial jurors and witnesses in criminal cases;

(6) the accounts of the coroner of the county for such services as are provided by law;

(7) all charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law;

(8) the necessary expenses incurred in the support of county hospitals and poorfarms and in the support of the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

(9) the contingent expenses necessarily incurred for the use and benefit of the county;

(10) every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners or declared to be a county charge.

History: En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; Cal. Pol. C. Sec. 4344; re-en. Sec. 4952, R.C.M. 1935; amd. Sec. 3, Ch. 420, L. 1971; amd. Sec. 1, Ch. 72, L. 1975; R.C.M. 1947, 16-3802(1).

7-6-2427. Special provisions for certain charges related to criminal prosecutions. (1) Notwithstanding 7-6-2426, all costs of a criminal prosecution, including attorneys' fees, of an offense committed in the state prison are not charges against the county in which the state prison is located. Such costs shall be paid by the department of institutions.

(2) When a criminal action is removed before trial, the costs accruing upon such removal and trial must be a charge against the county in which the indictment was found or information filed.

History: (1)En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; Cal. Pol. C. Sec. 4344; re-en. Sec. 4952, R.C.M. 1935; amd. Sec. 3, Ch. 420, L. 1971; amd. Sec. 1, Ch. 72, L. 1975; Sec. 16-3802, R.C.M. 1947; (2)En. Sec. 4682, Pol. C. 1895; re-en. Sec. 3200, Rev. C. 1907; re-en. Sec. 4953, R.C.M. 1921; Cal. Pol. C. Sec. 4345; re-en. Sec. 4953, R.C.M. 1935; Sec. 16-3803, R.C.M. 1947; R.C.M. 1947, 16-3802(2), 16-3803.

7-6-2428. Procedure to collect charges when criminal case is removed. (1) The district court of the county to which a criminal action is removed must certify the amount of costs allowed and certified by the court to the board of county commissioners of the county of the district court. Such board shall audit the same and draw its warrants therefor upon the treasury of the county from which the action was removed. The board drawing the warrants shall forward to the treasurer and board of the county from which the action was transferred a certified copy of the total amount allowed by the court, giving each item as certified to them by the clerk of the district court and the court.

(2) The board receiving the certified copy of the costs allowed shall enter the same in its books as a charge against the treasury of its county. The county treasurer of the county from which the action was removed must, immediately upon presentation, pay the warrants out of the general fund of that county, or if at the time of presentation, there is not sufficient money in the general fund to pay the same, he must endorse upon the warrants "Not paid for want of funds", and the warrants must be registered and draw interest at the same rate and be paid in the same manner as though it had been drawn by the board of the county where the indictment was found or information filed.

History: En. Sec. 4683, Pol. C. 1895; re-en. Sec. 3201, Rev. C. 1907; re-en. Sec. 4954, R.C.M. 1921; Cal. Pol. C. Sec. 4346; re-en. Sec. 4954, R.C.M. 1935; R.C.M. 1947, 16-3804; amd. Sec. 21, Ch. 252, L. 1979.

7-6-2429. Examination and allowance of officers' accounts. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, at the regular monthly meeting of the board, to examine and allow the accounts of all officers having the care, management, collection, or disbursement of money belonging to the county or appropriated by law or otherwise for its use and benefit.

History: En. Subd. 11, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.10, R.C.M. 1935; R.C.M. 1947, 16-1013.

7-6-2430. Accounts to be examined, settled, and allowed. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, at the regular meetings of the board, to examine, settle, and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the county treasury therefor and provide for the issuing of the same.

History: En. Subd. 12, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.11, R.C.M. 1935; R.C.M. 1947, 16-1014; amd. Sec. 22, Ch. 252, L. 1979.

Part 25

County Taxation

7-6-2501. Authorization for county mill levy. The board of county commissioners has jurisdiction and power, under such limitations and reservations as are prescribed by law, to levy such tax annually on the taxable property of the county for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding 27 mills on each dollar of the taxable valuation for any one year for counties of the fourth, fifth, sixth, and seventh classes and 25 mills on each dollar of the taxable valuation for any one year for counties of the first, second, and third classes and to levy such taxes as are required to be levied by special or local statutes.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.12, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959; amd. Sec. 1, Ch. 205, L. 1961; amd. Sec. 1, Ch. 33, L. 1963; amd. Sec. 1, Ch. 18, L. 1965; amd. Sec. 1, Ch. 128, L. 1967; amd. Sec. 1, Ch. 283, L. 1969; amd. Sec. 1, Ch. 503, L. 1973; amd. Sec. 1, Ch. 201, L. 1974; R.C.M. 1947, 16-1015.

7-6-2502. Responsibility of county commissioners to fix tax rate and levy tax. The board of county commissioners of each county must, on the second Monday in August, fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund and must levy taxes upon the taxable property of the county.

History: En. Sec. 81, p. 104, L. 1891; re-en. Sec. 3825, Pol. C. 1895; re-en. Sec. 2598, Rev. C. 1907; re-en. Sec. 2150, R.C.M. 1921; Cal. Pol. C. Sec. 3714; re-en. Sec. 2150, R.C.M. 1935; R.C.M. 1947, 84-3805.

7-6-2503. Duties of county treasurer related to taxation. The treasurer is collector of taxes. The county treasurer's duties as collector of taxes are prescribed in this title and Title 15.

History: Ap. p. Sec. 4314, Pol. C. 1895; re-en. Sec. 2959, Rev. C. 1907; re-en. Sec. 4727, R.C.M. 1921; Cal. Pol. C. Sec. 4105; re-en. Sec. 4727, R.C.M. 1935; Sec. 16-2405, R.C.M. 1947; Ap. p. Sec. 4372, Pol. C. 1895; re-en. Sec. 3008, Rev. C. 1907; re-en. Sec. 4772, R.C.M. 1921; re-en. Sec. 4772, R.C.M. 1935; Sec. 16-2626, R.C.M. 1947; R.C.M. 1947, 16-2405(part), 16-2626.

7-6-2504. Duties of county clerk related to taxation. The clerk of the board must record all orders levying taxes.

History: En. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Sec. 366, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Secs. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907; re-en. Sec. 4460, R.C.M. 1921; Cal. Pol. C. Sec. 4030; re-en. Sec. 4460, R.C.M. 1935; R.C.M. 1947, 16-908(8).

7-6-2505 through 7-6-2510 reserved.

7-6-2511. County levy for district court expenses. The governing body of each county may each year levy and collect a tax on the taxable property of the county for all district court costs, except those listed in 3-5-211, 3-5-213, and 3-5-215. The tax may not exceed 6 mills in the first- and second-class counties, 5 mills in third- and fourth-class counties, and 4 mills in fifth-, sixth-, and seventh-class counties. These expenses include but are not limited to salary and benefits for court clerks, court reporters, youth probation officers, and other employees of the district court.

History: En. Sec. 1, Ch. 692, L. 1979.

Compiler's Comments

Sunset provision. Sec. 3, Ch. 692, L. 1979, provided: "This act and the authority granted therein shall terminate June 30, 1983."

7-6-2512 through 7-6-2530 reserved.

7-6-2531. County may exceed maximum mill levy — election required. The governing body of a county may raise money by taxation for the support of county government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body must pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;
(b) the specific amount to be raised;
(c) the approximate number of mills required; and
(d) the specific mill levy limitation to be exceeded.

(2) The governing body must submit the question of the additional mill levy to the qualified electors of the county at the next regular primary election held in the even-numbered years. If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years.

History: En. Sec. 1, Ch. 613, L. 1979.

7-6-2532. Purpose of additional mill levy to be stated. The submission of the question shall expressly state the purpose for which the additional levy is to be made.

History: En. Sec. 2, Ch. 613, L. 1979.

7-6-2533. Notice of election on question of additional mill levy. Whenever the question of making an additional mill levy is submitted to the qualified electors, notice shall be given in the manner prescribed by law for noticing of elections.

History: En. Sec. 3, Ch. 613, L. 1979.

7-6-2534. Form of ballot. (1) If at any time it is desired to submit the question of additional levies for more than one purpose, such propositions shall be submitted on separate ballots.

(2) Each of the ballots shall be in substantially the following form:

Shall the county governing body be authorized to make a levy of (here insert the number) mills taxes in addition to the regular levy now authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made and the period for which it shall be in effect)?

☐ FOR additional levy

☐ AGAINST additional levy

History: En. Sec. 4, Ch. 613, L. 1979.

7-6-2535. Conduct of election. (1) The electors shall mark the ballot or ballots in the same manner as other ballots are marked under the election laws of this state.

(2) The election shall be held and the votes canvassed and returned as in other county elections as provided in Title 13.

History: En. Sec. 5, Ch. 613, L. 1979.

7-6-2536. Use of proceeds from additional mill levy. (1) Except as provided in subsection (2), if authorized, the money raised by the additional levy shall be used only for that specific purpose provided for in 7-6-2532.

(2) If any balance remains on hand after the purpose for which the levy was made has been accomplished, the balance may by vote of the governing body be transferred to any other fund of the county.

History: En. Sec. 6, Ch. 613, L. 1979.

Compiler's Comments

Code Commissioner correction. An erroneous reference in subsection (1) to "subsection (1)" was changed to "subsection (2)".

7-6-2537. Emergency provisions in effect. Nothing in 7-6-2531 through 7-6-2536 shall affect the emergency levy as provided by law.

History: En. Sec. 7, Ch. 613, L. 1979.

Part 26

County Warrants

7-6-2601. Details related to county warrants. (1) Warrants issued pursuant to 7-6-2202(1) shall be signed by the county clerk and the chairman of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each and the name of the person to whom payable and the purpose for which drawn must be stated thereon; and the warrants must, at the time they are issued, be registered by him.

(3) Warrants drawn by order of the board on the county treasury for the current expenses during each year must specify the liability for which they are drawn and when the liability accrued.

History: (1)En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; Sec. 16-2917, R.C.M. 1947; (2)En. Sec. 4425, Pol. C. 1895; re-en. Sec. 3046, Rev. C. 1907; re-en. Sec. 4812, R.C.M. 1921; Cal. Pol. C. Sec. 4219; re-en. Sec. 4812, R.C.M. 1935; Sec. 16-2918, R.C.M. 1947; (3)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; R.C.M. 1947, 16-1810(part), 16-2917(part), 16-2918; amd. Sec. 23, Ch. 252, L. 1979.

7-6-2602. Payment of warrants. (1) When a warrant is presented for payment, if there is money in the treasury for that purpose, the county treasurer must pay the same, write on the face thereof "Paid" and the date of payment, and sign his name thereto. Warrants must be paid in the order of presentation to the treasurer.

(2) The county treasurer must not pay any order or warrant except to the payee thereof or to his agent, assignee, or legal representative, whose authority must be in writing and delivered to him and must be returned with such order or warrant, when paid, to the board of county commissioners.

History: Ap. p. Sec. 4352, Pol. C. 1895; re-en. Sec. 2988, Rev. C. 1907; re-en. Sec. 4752, R.C.M. 1921; Cal. Pol. C. Sec. 4147; re-en. Sec. 4752, R.C.M. 1935; Sec. 16-2603, R.C.M. 1947; Ap. p. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2603, 16-2608(part).

7-6-2603. Registration of warrants. (1) If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration.

(2) The county treasurer must not register any county order or warrant in the name of any person other than the payee thereof except at the request of such payee or his agent, assignee, or legal representative, whose authority must be produced to the treasurer in writing.

History: (1)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2608(part).

7-6-2604. Interest on unpaid warrants. (1) When any high school warrant or any school district warrant is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon "Not paid for want of funds", annexing the date of presentation, and sign his name thereto. When the treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon and enter on his account the amount of such interest, distinct from the principal.

(2) From and after the date of presentation and endorsement by the treasurer, the warrant shall bear interest at a rate fixed by the board of trustees in accordance with law.

(3) All county warrants, after having been presented to the county treasurer for payment and by him endorsed "Not paid for want of funds in the treasury", from and after the date of such presentation and endorsement, shall draw interest at the rate fixed by the board of county commissioners in accordance with law.

History: Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R.C.M. 1921; Cal. Pol. C. Sec. 4148; re-en. Sec. 4753, R.C.M. 1935; amd. Sec. 2, Ch. 15, L. 1941; amd. Sec. 1, Ch. 53, L. 1945; amd. Sec. 25, Ch. 234, L. 1971; Sec. 16-2604, R.C.M. 1947; Ap. p. Sec. 4359, Pol. C. 1895; re-en. Sec. 2995, Rev. C. 1907; re-en. Sec. 4759, R.C.M. 1921; Cal. Pol. C. Sec. 4153; re-en. Sec. 4759, R.C.M. 1935; Sec. 16-2610, R.C.M. 1947; Ap. p. Sec. 1, Ch. 86, L. 1923; re-en Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; Sec. 16-2002, R.C.M. 1947; R.C.M. 1947, 16-2002, 16-2604, 16-2610; amd. Sec. 33, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (1), deleted "any county warrant" after "When"; in (3), substituted "board of county commissioners" for "county board".

7-6-2605. Call for payment of warrants drawing interest. (1) When there is sufficient money to pay the warrants drawing interest, the treasurer must give notice in some newspaper published in his county or, if none is published, then by written notice posted upon the courthouse door, stating therein that he is ready to pay such warrants.

(2) In advertising warrants under the provisions of this section in any newspaper, the treasurer must not publish the warrants in detail but give notice only that county warrants presented for payment prior to such date, stated in the notice are payable. When only a part of the warrants presented for payment on the same day are payable, the treasurer must designate such payable warrants in the advertisement.

(3) Such warrants cease to draw interest from the first publication or posting of such notice.

(4) (a) If such warrants be not re-presented for payment within 60 days from the time the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be applied by the treasurer to the payment of unpaid warrants next in order of registry.

(b) The board of county commissioners may, on application and presentation of warrants, properly endorsed, which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated.

History: (1), (3)En. Sec. 4354, Pol. C. 1895; re-en. Sec. 2990 Rev. C. 1907; re-en. Sec. 4754, R.C.M. 1921; Cal. Pol. C. Sec. 4149; re-en. Sec. 4754, R.C.M. 1935; Sec. 16-2605, R.C.M. 1947; (2)En. Sec. 4355, Pol. C. 1895; re-en. Sec. 2991, Rev. C. 1907; re-en. Sec. 4755, R.C.M. 1921; Cal. Pol. C. Sec. 4150; re-en. Sec. 4755, R.C.M. 1935; Sec. 16-2606, R.C.M. 1947; (4)En. Sec. 4358, Pol. C. 1895; re-en. Sec. 2994, Rev. C. 1907; re-en. Sec. 4758, R.C.M. 1921; Cal. Pol. C. Sec. 4152; re-en. Sec. 4758, R.C.M. 1935; Sec. 16-2609, R.C.M. 1947; R.C.M. 1947, 16-2605, 16-2606, 16-2609.

7-6-2606. Order of redemption of warrants. (1) Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of money in the treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the treasurer.

(2) Upon the receipt of money into the treasury, not otherwise appropriated, he must set apart the same or so much thereof as is necessary for the payment of such warrants.

History: En. Sec. 94, p. 452, Cod. Stat. 1871; amd. Sec. 1, p. 68, L. 1874; re-en. Sec. 440, 5th Div. Rev. Stat. 1879; re-en. Sec. 893, 5th Div. Comp. Stat. 1887; amd. Sec. 4356, Pol. C. 1895; re-en. Sec. 2992, Rev. C. 1907; re-en. Sec. 4756, R.C.M. 1921; Cal. Pol. C. Sec. 4151; re-en. Sec. 4756, R.C.M. 1935; R.C.M. 1947, 16-2607.

7-6-2607. Examination and processing of warrants. (1) The board, at its annual March session or more often if necessary, must examine the county warrants returned by the county treasurer by comparing each warrant with the record of warrants issued in the county clerk's office.

(2) The board must cause to be canceled all county warrants that have remained uncalled for 1 year or more in the county clerk's office, these warrants to be canceled in the same manner as other county warrants. At the same time, the county treasurer must deliver to the board all warrants or vouchers that are in the treasurer's possession for money disbursed by him as treasurer and the clerk must receipt for the same.

(3) The board must cause to be entered on the record of warrants, opposite to the entry of each warrant issued, the date when the warrant was canceled and must make a list of the canceled warrants, specifying the number, date, amount, and the person to whom the same was payable, and must cause the list to be entered on the minutes of the board.

History: En. Sec. 28, p. 504, Bannack Stat.; amd. Sec. 28, p. 438, Cod. Stat. 1871; re-en. Sec. 362, 5th Div. Rev. Stat. 1879; re-en. Sec. 767, 5th Div. Comp. Stat. 1887; amd. Sec. 4291, Pol. C. 1895; re-en. Sec. 2950, Rev. C. 1907; re-en. Sec. 4613, R.C.M. 1921; re-en. Sec. 4613, R.C.M. 1935; R.C.M. 1947, 16-1811; amd. Sec. 24, Ch. 252, L. 1979.

Part 27

Investment of County Money

7-6-2701. Investment of certain money in county warrants. (1) Except as provided in 7-6-2802, whenever the county has under its control any money for which there is no immediate demand, in any special fund subject to deposit, which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance. In case of such purchase, the county commissioners shall designate the fund or funds to be so invested and shall fix the amount thereof and shall also designate the county warrant or warrants which are to be purchased by such funds.

(2) The county clerk and recorder shall thereupon cause to be attached to or stamped, written, or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter, when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board. The warrant so purchased shall be registered as other county warrants and bear interest as provided by law. When the designated amounts have been invested, the county treasurer shall notify the county clerk and recorder.

(3) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(4) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(part).

7-6-2702. Investment of money held in capital improvement fund. The money held in the capital improvement fund, authorized by 7-6-2219 may be invested as provided by law. All interest earned on the fund must be credited to the capital improvement fund.

History: En. 16-1189 by Sec. 4, Ch. 54, L. 1975; R.C.M. 1947, 16-1189.

Part 28

Management of School Money

7-6-2801. Management of school funds. The county treasurer must:

(1) keep all school money in a separate fund and keep a separate account of its disbursement to the several school districts which are entitled to receive it, according to the apportionment of the county superintendent of schools;

(2) notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform him of the amount of school money belonging to any other fund subject to apportionment, or as otherwise provided by law;

(3) pay all warrants drawn on county or district school money, in accordance with the provisions of law, whenever such warrants are countersigned by the district clerk and properly endorsed by the holders;

(4) make annually, during the month of September, a financial report for the preceding year ending August 31 to the county superintendent, in such form as is required by him.

History: En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R.C.M. 1921; Cal. Pol. C. Sec. 4144; re-en. Sec. 4750, R.C.M. 1935; amd. Sec. 3, Ch. 452, L. 1975; R.C.M. 1947, 16-2601(6) thru (9); amd. Sec. 25, Ch. 252, L. 1979.

7-6-2802. Investment of proceeds arising from sale of county high school construction bonds. (1) Whenever the county has under its control any money realized from the sale of bonds by a county high school for the purpose of construction, for which there is no immediate demand and which in the judgment of the governing body of the county high school it would be advantageous to invest in any time or savings deposit or in short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments.

(2) Interest earned from such investments, except interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, which must be credited to the sinking fund, may be credited to the sinking fund of the county high school, provided that in the event construction of said buildings is delayed for a period longer than 6 months due to court action or other causes beyond the control of the trustees, the trustees may direct that interest earned be credited to the fund from which the money was withdrawn. The trustees may authorize expenditures from interest earned, except as provided above, for furnishing and equipping the buildings for which the bonds were sold.

(3) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(2), (3).

Parts 29 through 40 reserved

Part 41

General Provisions Related to Municipalities

7-6-4101. Fiscal year for municipalities. The fiscal year of cities and towns commences on July 1 of each year and ends on June 30 of the following year.

History: En. Sec. 4873, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3359, Rev. C. 1907; re-en. Sec. 5217, R.C.M. 1921; amd. Sec. 1, Ch. 25, L. 1927; re-en. Sec. 5217, R.C.M. 1935; R.C.M. 1947, 84-4730; amd. Sec. 26, Ch. 252, L. 1979.

7-6-4102. Appropriation of money and payment of debts and expenses. The city or town council has power to appropriate money and provide for the payment of the debts and expenses of the city or town and also the debts of the municipal corporation of which it is the successor.

History: En. Subd. 76, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.75, R.C.M. 1935; R.C.M. 1947, 11-978.

7-6-4103. Annual appropriation. The council must, during the month of July in each fiscal year, pass an ordinance to be known as the "Annual appropriation for the .... of .... for the fiscal year beginning July 1, 19..", in which ordinance there must be appropriated enough money to defray the expenses or liabilities of the city or town for such fiscal year. There must be specified therein the amount appropriated for each separate object or fund and the salary or compensation to be paid to each officer of the city or town.

History: En. Sec. 380, 5th Div. Comp. Stat. 1887; amd. Sec. 4874, Pol. C. 1895; re-en. Sec. 3360, Rev. C. 1907; re-en. Sec. 5218, R.C.M. 1921; amd. Sec. 2, Ch. 25, L. 1927; re-en. Sec. 5218, R.C.M. 1935; R.C.M. 1947, 84-4731.

7-6-4104. Duties of city treasurer relating to finances. It shall be the duty of the city treasurer:

(1) to receive all money that comes to the city, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law;

(2) to give every person paying money to him, as treasurer a receipt therefor, specifying the date of payment, the amount, and for what paid;

(3) to pay out, in the order they are registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part).

7-6-4105. Financial reports and records to be maintained by city treasurer. It shall be the duty of the city treasurer:

(1) to present, on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the city received by him and disbursed by him during the preceding month and the state of each particular fund, which statement must be verified by his oath;

(2) to keep the books and accounts of the city in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor or the council or any member thereof;

(3) to render at any time an account to the council, showing the money on hand and the condition of the treasury;

(4) to annually make out and submit to the city council at its last meeting prior to May 1 a detailed account of all receipts and expenditures during the past fiscal year and to file the same with the clerk;

(5) to keep a separate account of each fund or appropriation and the debits and credits thereof;

(6) to keep a register of all warrants paid, called "The Registry Book", which must show the date, amount, and number and the person to whom and the fund from which the same was paid; and

(7) to deliver and file with the city clerk all vouchers, warrants, or orders paid by him.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part).

7-6-4106. Publication or posting of annual statement of city receipts and expenditures. An abstract of the account of receipts and expenditures required by 7-6-4105(4) must be published in some newspaper in the city, or if none is published, such abstract must be posted in the room or building occupied by the council.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part).

7-6-4107. Duties of the city clerk related to finance. It is the duty of the clerk to enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the city treasury. Such book is called "The Finance Book".

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-6-4108. Duties of town clerk related to finance. (1) It shall be the duty of the town clerk:

(a) to receive all money that comes to the town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law;

(b) to give every person paying money to him as town clerk a receipt therefor, specifying the date of payment, the amount, and for what paid;

(c) to pay out, in the order they are registered, all warrants presented for payment when there are funds in the treasury to pay the same.

(2) The statutory functions and duties of a town treasurer provided in this title are transferred to the town clerk. Any reference to a town treasurer means the town clerk.

History: (1)En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; (2)En. 11-805.2 by Sec. 5, Ch. 146, L. 1974; Sec. 11-805.2, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-805.2.

7-6-4109. Financial reports and records to be maintained by town clerk. It shall be the duty of the town clerk:

(1) to present, on the first Monday of each month, to the council a full and detailed statement of the amounts of money belonging to the town received by him and disbursed by him during the preceding month and the state of each particular fund, which statement must be verified by his oath;

(2) to keep the books and accounts of the city or town in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor or the council or any member thereof;

(3) to render at any time an account to the council, showing the money on hand and the condition of the treasury;

(4) to annually make out and submit to the town council, at its last meeting prior to May 1, a detailed account of all receipts and expenditures during the past fiscal year;

(5) to keep a separate account of each fund or appropriation and the debits and credits thereof;

(6) to keep a register of all warrants paid, which must show the date, amount, and number and the person to whom and the fund from which the same was paid and to enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the town treasury.

History: **En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).**

7-6-4110. Publication or posting of annual statement of town receipts and expenditures. An abstract of the annual account of receipts and expenditures required by 7-6-4109(4) must be published in some newspaper in the city or town, or if none is published, such abstract must be posted in the room or building occupied by the council.

History: **En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).**

7-6-4111. Annual financial statement. (1) Within 60 days after the close of each fiscal year, the city or town clerk of each city and town must make out, in duplicate, a complete statement of the financial condition of the city or town for that fiscal year, showing:

(a) the indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

(b) the amount of money received from taxes upon real and personal property;

(c) the amount of money received from fines, penalties, and forfeitures;

(d) the amount of money received from licenses;

(e) the amount of money received from all other sources, each source and the amount received from it being shown separately;

(f) for each fund, the amount of money, if any, on hand at the beginning of the fiscal year, the amount received, and the amount paid out during the fiscal year;

(g) a concise description of all property owned by the city or town, with an approximate estimate of the value of it;

(h) the rates of taxation and purposes for which taxes were levied during the fiscal year;

(i) other information which may be required by the department of administration.

(2) The forms on which the statement shall be made shall be prescribed by the department.

History: En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(part); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1)(i).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-4111 . . . are transferred to the department of administration."

7-6-4112. Funds to be balanced. The amount of money paid out from each fund must be deducted from the total of the money on hand at the beginning of the fiscal year and the money received during the year, and a balance must be struck for each fund.

History: En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(part).

7-6-4113. Filing of annual financial statement. (1) The city or town clerk must, not later than August 31 following the close of each fiscal year, transmit one copy of the statement to the department of administration and must present the other copy to the city or town council or commission at its first regular meeting in September.

(2) If a city or town clerk fails to file a copy of the statement with the department within the time specified, the department, without delay, shall examine the books, records, and accounts of the city or town. The department shall make from its examination a statement of the financial condition of the city or town for the preceding fiscal year in the manner it should have been made by the city or town clerk. The examination shall be considered a special audit under the provisions of subsections (4) and (5) of 2-7-503, and all of the provisions of subsections (4) and (5) of 2-7-503 apply to it.

History: En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(3), (4); amd. Sec. 27, Ch. 252, L. 1979; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-4113 . . . are transferred to the department of administration."

7-6-4114 through 7-6-4120 reserved.

7-6-4121. Authorization to conduct municipal business on a cash basis. (1) In case the total indebtedness of a city or town has reached 17% of the total taxable value of the property of the city or town subject to taxation, as ascertained by the last assessment for state and county taxes, the city or town may conduct its affairs and business on a cash basis as provided by subsection (2).

(2) (a) Whenever a city or town is conducting its business affairs on a cash basis, the reasonable and necessary current expenses of the city or town may be paid out of the cash in the city or town treasury and derived from

its current revenues, under such restrictions and regulations as the city or town council may by ordinance prescribe.

(b) In the event that payment is made in advance, the city or town may require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer or town clerk, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which the advance is made.

(c) Before the payment of the current expenses mentioned above, the city or town council shall first set apart sufficient money to pay the interest upon its legal, valid, and outstanding bonded indebtedness and any sinking funds therein provided for and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims.

History: (1)En. Sec. 4812, Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907; re-en. Sec. 5078, R.C.M. 1921; re-en. Sec. 5078, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1957; amd. Sec. 25, Ch. 566, L. 1977; Sec. 11-1301, R.C.M. 1947; (2)En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R.C.M. 1921; re-en. Sec. 5079, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1973; Sec. 11-1302, R.C.M. 1947; R.C.M. 1947, 11-1301(part), 11-1302(part); amd. Sec. 28, Ch. 252, L. 1979; amd. Sec. 41, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Increased the indebtedness limitation from 11% to 17% in (1).

Effective Date: Section 66, Ch. 614, L. 1981, provided: (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-6-4122. Manner of making payment for judgments against municipalities. (1) On the certificate of a justice of the peace or the clerk of the court in which any judgment is rendered, showing the amount of the judgment and the date of its entry, the council must by ordinance direct that the amount of such judgment be paid out of the general fund and that a warrant issue therefor on the general fund if there is sufficient money therein, exclusive of the appropriations for the current fiscal year, to pay the same.

(2) (a) The council must at the proper times levy and cause to be collected a tax on all the property of the city or town for the payment of such judgment within a period of 3 years from its presentation if there is not sufficient money as aforesaid in the general fund to pay the same.

(b) If any judgment rendered against any town or city exceeds the sum of $10,000, the council may fund the same as other indebtedness against the city or town is funded.

History: Ap. p. Sec. 5037, Pol. C. 1895; re-en. Sec. 3486, Rev. C. 1907; re-en. Sec. 5084, R.C.M. 1921; Cal. Pol. C. Sec. 4455; re-en. Sec. 5084, R.C.M. 1935; Sec. 11-1501, R.C.M. 1947; Ap. p. Sec. 5038, Pol. C. 1895; re-en. Sec. 3487, Rev. C. 1907; re-en. Sec. 5085, R.C.M. 1921, re-en. Sec. 5085, R.C.M. 1935; Sec. 11-1502, R.C.M. 1947; R.C.M. 1947, 11-1501, 11-1502.

7-6-4123. Procedure to transfer municipal funds. No money must be transferred from one fund to another except by ordinance or resolution of the council.

History: En. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5035, R.C.M. 1921; re-en. Sec. 5035, R.C.M. 1935; R.C.M. 1947, 11-808.

7-6-4124. Procedure to close inactive accounts. Whenever the council of any city or town having a corporate existence in this state shall deem it necessary to remove inactive accounts from its records, where said accounts shall not have any further purpose, it shall be lawful for said council to direct the proper city or town officials to file claims against the respective inactive funds in favor of the general fund of said city or town, after which the council shall allow the same and cause the inactive funds to be closed and not continued in the record of active funds.

History: **En. Sec. 1, Ch. 57, L. 1939; R.C.M. 1947, 11-809.**

7-6-4125 through 7-6-4130 reserved.

7-6-4131. Allocation and appropriation of all-purpose levy. (1) In the event the all-purpose levy method provided for in 7-6-4452 is followed in municipal financing, any municipality following it shall appropriate the levy to the several departments of the municipality in its annual budget and appropriation ordinance or in other legal manner, as the governing body of such municipality shall deem best.

(2) Any municipality which has adopted an urban renewal plan may allocate the funds raised by its levy within the urban renewal area in accordance with the provisions of its urban renewal plan.

History: **En. Sec. 3, Ch. 82, L. 1965; amd. Sec. 3, Ch. 375, L. 1971; amd. Sec. 6, Ch. 287, L. 1974; R.C.M. 1947, 84-4701.3.**

7-6-4132. Distribution of all-purpose levy. The money received from the all-purpose levy shall be accounted for in a common fund known as the all-purpose general fund.

History: **En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(part).**

7-6-4133. Deposit of revenues from certain sources in all-purpose fund. Cities and towns making the all-purpose annual mill levy shall deposit into the all-purpose general fund all money received from other sources, including fees, charges, and fines received from the operation of airports, libraries, swimming pools, parking lots, golf courses, and any other operation supported in part or whole from an appropriation of the all-purpose levy and not otherwise provided by law.

History: **En. Sec. 1, Ch. 131, L. 1973; R.C.M. 1947, 11-1414.**

7-6-4134. Capital improvement program fund. An amount not to exceed 5% of the money received from and as a part of the aforesaid all-purpose levy may be placed in a separate fund, known as the capital improvement program fund, to be earmarked for the replacement and acquisition of property, plant, or equipment costing in excess of $5,000, with a life expectancy of 5 years or more, provided that a capital improvement program has been formally adopted by city or town ordinance.

History: **En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(2).**

7-6-4135. Investment of money in capital improvement program fund. The money held in the capital improvement program fund shall, whenever possible, be invested in savings or time deposits in a state or national bank insured by the federal deposit insurance corporation or in direct obligations of the United States government and shall be credited back to the fund plus interest earned.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(3).

Part 42

Municipal Budget Law

7-6-4201. Short title. This part may be referred to as the "Municipal Budget Law".

History: En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; R.C.M. 1947, 11-1401(part).

7-6-4202. Definitions. As used in this part, the following definitions apply:

(1) The term "clerk" shall mean the clerk of the city.

(2) The term "council" shall mean city council or city commission.

(3) The terms "municipal corporation" or "municipality" shall mean city.

(4) The terms "treasurer" or "city treasurer" shall mean the city treasurer or the town clerk, whichever is appropriate.

History: (1) thru (3)En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; Sec. 11-1401, R.C.M. 1947; (4)En. by Code Commissioner, 1979; R.C.M. 1947, 11-1401(part).

7-6-4203. Scope of part. The provisions of this part shall apply to all cities in this state.

History: En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; R.C.M. 1947, 11-1401(part).

7-6-4204. Construction of part. This part shall not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation prescribed by existing law or acts amendatory thereof.

History: En. Sec. 11, Ch. 121, L. 1931; re-en. Sec. 5083.11, R.C.M. 1935; R.C.M. 1947, 11-1412.

7-6-4205. Role of department of administration. The department of administration shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part. It shall define what expenditures are chargeable to each budget account and shall establish accounting and cost systems necessary to provide accurate budget information.

History: En. Sec. 2, Ch. 121, L. 1931; re-en. Sec. 5083.2, R.C.M. 1935; R.C.M. 1947, 11-1411; amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs".

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-4205 . . . are transferred to the department of administration."

7-6-4206. Violations. Any person violating any of the provisions of this part shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 121, L. 1931; re-en. Sec. 5083.12, R.C.M. 1935; R.C.M. 1947, 11-1413.

7-6-4207 through 7-6-4220 reserved.

7-6-4221. Filing of estimate of revenues and expenses with clerk. (1) Before July 1 of each year the clerk of each city shall notify in writing each official in charge of an office, department, service, or institution of the municipality to file with the clerk, before July 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation and of all expenditures required by the office, department, service, or institution for the current fiscal year.

(2) (a) The council shall submit to the clerk the estimate of expenditures for all purposes for the council. The council shall also submit to the clerk detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be submitted to and approved at an election to be held.

(b) The mayor of the municipality shall submit to the clerk a detailed estimate showing the amount to be appropriated from funds belonging to the municipality to defray the municipality's portion of the cost of making improvements in special improvement districts and maintaining them and of installing lighting systems in special lighting districts and maintaining them.

(c) The city treasurer shall prepare the estimates for interest and debt reduction.

(d) The clerk shall prepare all other estimates which properly fall within the duties of his office.

(3) The estimates required in this section shall be submitted on forms provided by the clerk and prescribed by the department of administration. The form may be varied or departed from only with permission and approval of the department. Each of the officials shall file the estimates within the time and in the manner provided in the form and notice.

(4) In the absence or disability of an official, the duties required in this section or 7-6-4223 devolve upon the official or employee in charge of the office, department, service, or institution for the time being.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (3).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-4221 . . . are transferred to the department of administration."

7-6-4222. Exclusion of certain items from estimate and budget. There may not be included in the estimate or in either the preliminary or final budget of a municipality any part of that cost which is to be paid by special assessments against the property within the districts or any part of the cost in sprinkling districts which is to be defrayed by special assessments against the property in the sprinkling districts.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part).

7-6-4223. Penalty for noncompliance with filing requirements. (1) The clerk shall deduct and withhold as a penalty from the salary or compensation of each official failing or refusing to file the estimate the sum of

$10 for each day of delay. The total penalty against an official may not exceed $50 per year.

(2) The notice provided for in 7-6-4221 shall contain a copy of this penalty clause.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part).

7-6-4224. Preparation of expenditure program and information on sources of revenue. (1) From estimates of revenue and disbursements, the clerk shall prepare a tabulation showing the complete expenditure program of the municipality for the current fiscal year and the sources of revenue by which it is to be financed.

(2) The tabulation shall set forth:

(a) the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year;

(b) the actual receipts for the last completed fiscal year;

(c) the surplus or unencumbered treasury balances at the close of that last fiscal year;

(d) the amount necessary to be raised by taxation;

(e) the estimated expenditure for each office, department, service, or institution for the current fiscal year;

(f) the actual expenditures for the last completed fiscal year;

(g) all contracts or other obligations which will affect the current year revenues;

(h) the total amount of emergency warrants issued during the preceding fiscal year, with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 4, Ch. 121, L. 1931; re-en. Sec. 5083.4, R.C.M. 1935; amd. Sec. 50, Ch. 348, L. 1974; amd. Sec. 13, Ch. 213, L. 1975; R.C.M. 1947, 11-1404(1), (4).

7-6-4225. Classification of estimates, appropriations, and expenditures. (1) In the tabulation required by 7-6-4224, the estimates, appropriations, and expenditures shall be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held later.

(2) (a) Within the class of salaries and wages, each salary shall be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in an office where the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor shall be set forth.

(b) Expenditures under the general class of maintenance and operation shall be classified according to a standard classification to be established by the department of administration.

(c) Expenditures for capital outlay shall set forth and describe each object of expenditure separately.

(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or which cannot properly be assigned to any of the general classes shall be set forth and itemized in detail.

History: En. Sec. 4, Ch. 121, L. 1931; re-en. Sec. 5083.4, R.C.M. 1935; amd. Sec. 50, Ch. 348, L. 1974; amd. Sec. 13, Ch. 213, L. 1975; R.C.M. 1947, 11-1404(2), (3); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (2)(b).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-4225 . . . are transferred to the department of administration."

7-6-4226. Consideration of tabulation by council — preparation of preliminary budget. (1) The tabulation shall be submitted to the council by the clerk on or before July 20.

(2) Upon receipt thereof, the council shall immediately consider the same in detail and shall, on or before July 25, make any revisions, reductions, additions, or changes therein that they deem advisable. Such tabulation, with such revisions, reductions, additions, or changes as have been made therein as herein provided, shall constitute the preliminary budget of the municipality for the fiscal year which it is intended to cover.

History: En. Sec. 5, Ch. 121, L. 1931; re-en. Sec. 5083.5, R.C.M. 1935; R.C.M. 1947, 11-1405(part).

7-6-4227. Notice of hearing on preliminary budget. (1) The council shall then cause a notice to be published stating that:

(a) the council has completed its preliminary municipal budget for the current fiscal year;

(b) the budget has been placed on file and is open to inspection in the office of the clerk of the municipality;

(c) the council will meet on the Wednesday immediately preceding the second Monday in August for the purpose of fixing the final budget and making appropriations, designating the time and place when and where such meeting will be held; and

(d) any taxpayer or resident may appear at the meeting and be heard for or against any part of the budget.

(2) The notice shall be published at least one time in the official newspaper of the municipality or, if there is none, then in a newspaper of general circulation in the county in which the municipality is situated.

History: En. Sec. 5, Ch. 121, L. 1931; re-en. Sec. 5083.5, R.C.M. 1935; R.C.M. 1947, 11-1405(part); amd. Sec. 29, Ch. 252, L. 1979.

7-6-4228. Hearing on preliminary budget. (1) On the Wednesday preceding the second Monday in August, the council shall meet at the time and place designated in the notice provided in 7-6-4227, at which time any taxpayer or resident may appear and be heard for or against any part of the budget. The council may call in the official in charge of an office, department, service, or institution, at the time the estimates for their respective offices are under consideration, for examination concerning the estimates. The official shall be called in by the council, upon the request of a taxpayer or resident, for questioning upon the estimates either by the council, taxpayer, or resident.

(2) The hearing shall be continued from day to day and shall be concluded and the budget finally approved and adopted on the second Monday in August, prior to the fixing of the tax levies by the council.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(1); amd. Sec. 30, Ch. 252, L. 1979.

7-6-4229. Determination of projected fund cash flow following hearing. (1) Upon the conclusion of the hearing, the council shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources except the taxation of property. In so doing, the council may not include any amount anticipated from the payment of taxes which became delinquent during a preceding fiscal year.

(2) The council shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund against which warrants are to be drawn for the expenditures so authorized. There may not be added to the amount appropriated and authorized to be spent for an item or purpose or to the total amount appropriated and authorized to be spent from any fund, other than a fund for the payment of principal or interest on outstanding bonds, any amount because of anticipated loss of revenue by reason of nonpayment of taxes levied for the fiscal year. The expenditures authorized from a fund, including reserve, may not exceed the aggregate of:

(a) the cash balance in the fund at the close of the preceding fiscal year in excess of outstanding unpaid warrants against the fund at the close of that fiscal year;

(b) the amount of estimated revenues to accrue to the fund; and

(c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(2).

7-6-4230. Determination of fund requirements to be met by tax levy. (1) Following the determinations required by 7-6-4229, the council shall determine the amount to be raised for each fund for which a tax levy is to be made by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated revenues, if any, to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the council in the budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund by tax levy during the current fiscal year.

(2) The council may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a

reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount added to any fund as a reserve may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency and other outstanding warrants.

(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve, must not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(3).

7-6-4231. Final budget — approval and adoption. (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation is made or expenditure authorized and the fund out of which it is to be paid, shall set out:

(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year;

(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund by tax levy during the current fiscal year.

(2) The council shall then by resolution approve and adopt the budget as finally determined, and the clerk shall enter it at length in the official minutes of the council.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(4).

7-6-4232. Fixing of tax levy. (1) On the second Monday in August and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. The taxable valuation of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond principal and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) Each levy shall be made in the manner provided by 15-10-201.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(5); amd. Sec. 31, Ch. 252, L. 1979.

7-6-4233. Budget and tax levies to be supplied to department of administration. (1) The city clerk shall, not later than September 15, forward a complete copy of the final budget, together with the tax levies, to the department of administration.

(2) If a city clerk fails to forward the copy of the budget to the department within the time required, the department shall, before October 1, notify the mayor and council of the city that a copy of the budget has not been forwarded by the city clerk. The council must then withhold from the city clerk his salary or compensation for the month of September until the city clerk presents the council with a notice from the department that the copy of the budget has been received.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(6); amd. Sec. 7, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-6-4233 . . . are transferred to the department of administration."

7-6-4234. Effect of exceeding budget appropriations — personal liability. (1) Expenditures made, liabilities incurred, or warrants issued in excess of any of the detailed budget appropriations, as originally determined or as thereafter revised by transfer as provided in this part, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond.

(2) (a) The council shall not approve any claim and the clerk shall not issue any warrant for any expenditure in excess of said detailed budget appropriations, as finally adopted or as revised under the provisions of this part, except upon an order of a court of competent jurisdiction or for an emergency as hereinafter provided. Any municipal officer or officers approving any claim or issuing any warrant in excess of any such budget appropriation except as above provided shall forfeit to the city fourfold the amount of such claim or warrant.

(b) The amount forfeited under subsection (2)(a) shall be recovered in an action against such officer or officers or all of them and their several sureties on their official bonds. It shall be the duty of the city attorney to bring an action therefor in the name of the municipal corporation.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(3).

7-6-4235. Limitations on appropriations after budget adopted. (1) The estimates of expenditures, itemized and classified as required in 7-6-4224 and 7-6-4225 and as finally fixed and adopted by said council, shall constitute the appropriations for the municipality for the fiscal year intended to be covered thereby.

(2) Except as provided in 7-6-4236, the council and every other municipal official shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively.

History: **En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part).**

7-6-4236. Transfer of appropriations within and among expenditure classes. (1) Upon a resolution adopted by the council at a regular or special meeting and entered upon its minutes, transfers or revisions within the general class of salaries and wages and of maintenance and support may be made, provided that no salary shall be increased above the amount appropriated therefor.

(2) (a) Except as provided in subsection (2)(b), transfers between the general classes provided in 7-6-4225 shall not be permitted.

(b) In the case of appropriations to be expended from municipal road or bridge funds, any transfer may be made between or among the general classes of:

(i) salaries and wages;
(ii) maintenance and support; and
(iii) capital outlay.

History: **En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part).**

7-6-4237. Use of bond proceeds and borrowed money. (1) Money received from borrowing shall be used for no other purpose than that for which borrowed, except that if any surplus remains after the accomplishment of the purpose for which borrowed, it shall be used to redeem the municipal debt.

(2) Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available.

(3) The authorization of a bond issue by the electors or by the governing body of the city where an election is not required shall constitute an appropriation of the bond proceeds to the purpose for which the bonds are authorized, whether or not such purpose is included in a budget previously adopted, but no warrants shall be drawn, expenditures made, or obligations incurred in excess of such appropriation except pursuant to an additional appropriation included in a regularly adopted budget.

History: **En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part).**

7-6-4238. Restriction on tax-financed expenditures if voter approval of tax levy required. Where any expenditure program is to be financed from a tax levy required to be authorized and approved at an election, no expenditure shall be made or obligation incurred thereunder until such levy is so authorized and approved.

History: **En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part).**

7-6-4239. Procedure when there exist unpaid and outstanding warrants at end of fiscal year. (1) When at the end of any fiscal year any city has warrants outstanding and registered against any fund, other than warrants issued by reason of any emergency budget or budgets, and is without sufficient cash in such fund to pay the same with interest thereon, the city council must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation to pay such warrants or a substantial part thereof with the interest thereon. The amount of such appropriation shall be fixed and determined by the city council but must, in any event, be at least 10% of the amount which the levy for the fund will produce if the amount of such outstanding and registered warrants, with interest thereon, equals or exceeds such amount.

(2) When at the end of any fiscal year any city has outstanding registered emergency warrants against any fund issued by reason of any emergency budget or budgets and is without sufficient cash in such fund to pay the same with interest thereon, the city council must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation sufficient to pay such warrants with interest thereon.

(3) None of the provisions of this section shall be construed as authorizing a levy to be made for any fund in excess of the limitation prescribed by existing law or acts hereafter enacted amendatory thereof.

History: En. Sec. 1, Ch. 53, L. 1943; re-en. Sec. 5083.6A, R.C.M. 1935; R.C.M. 1947, 11-1407.

7-6-4240. Lapse of appropriation. (1) Subject to the provisions of subsection (2), all appropriations, other than the appropriations for uncompleted improvements in progress of construction, shall lapse at the end of the fiscal year.

(2) The appropriation accounts shall remain open for a period of 30 days after the end of the fiscal year for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired, all appropriations, except as hereinbefore provided regarding uncompleted improvements, shall become null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the ensuing budget.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(7).

7-6-4241. Clerk's report concerning expenditures, liabilities, and appropriations. At the first meeting of the council in each month, the clerk shall submit to the council a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each appropriation. He shall also set forth the receipts from taxes and in detail the receipts from all other sources by each fund for the same period.

History: En. Sec. 9, Ch. 121, L. 1931; re-en. Sec. 5083.9, R.C.M. 1935; R.C.M. 1947, 11-1410.

7-6-4242 through 7-6-4250 reserved.

7-6-4251. Procedure to make expenditures and incur liabilities in case of serious emergencies. Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection; for the immediate preservation of order or of public health; for the restoration of a condition of usefulness of any public property the usefulness of which has been destroyed by accident; for the relief of a stricken community overtaken by calamity; in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the municipality; or to meet mandatory expenditures required by law, the council may, upon adoption by unanimous vote of all members present at any meeting (the time and place of which all members shall have had reasonable notice) of a resolution stating the facts constituting the emergency, an estimate of the amount required to be expended, and the fund against which emergency warrants are to be issued and upon entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing.

History: **En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(4).**

7-6-4252. Procedure to make expenditures and incur liabilities in case of other emergencies. (1) In a public emergency other than those described in 7-6-4251 and which could not reasonably have been foreseen at the time of making the budget, the council, by unanimous vote of the members present at any meeting (the time and place of which all of the members shall have had reasonable notice), shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency, the estimated amount of money required to meet the emergency, and the fund against which emergency warrants shall be drawn.

(2) The council shall publish the resolution, together with a notice that a public hearing will be held on the resolution at the time and place designated in the notice, once in the official newspaper of the municipality and, if there is none, then in a newspaper of general circulation in the county in which the municipality is situated. The hearing may not be less than 1 week after the date of publication.

(3) Any taxpayer or resident of the municipality may appear at the hearing and be heard for or against the expenditure of money for the alleged emergency.

(4) (a) Upon the conclusion of the hearing, if the council approves the emergency expenditure, it shall make and enter upon its official minutes, by unanimous vote of all of the members of the council present at the meeting, an order setting forth the facts constituting the emergency, together with the amount of expenditure authorized therefor by them and the fund against which emergency warrants shall be drawn. Subject to the limitations of subsection (4)(b), the order is lawful authorization for them to expend such amount, but no more, for such purpose.

(b) No expenditure may be made or liability incurred pursuant to the order until 5 days, exclusive of the day of entry of the order, elapse.

History: **En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(part); amd. Sec. 32, Ch. 252, L. 1979.**

7-6-4253. Appeal of order for certain emergency expenditures. (1) During the 5-day period provided by 7-6-4252(4)(b), any taxpayer or resident of the municipality feeling aggrieved by the order issued pursuant to 7-6-4252(4) may appeal therefrom to the district court for the county in which the municipality is situated by filing with the clerk of the court a verified petition, a copy of which has theretofore been served upon the clerk of the municipality. The petition shall set forth in detail the objections of the petitioner to the order, giving reasons why the emergency does not exist.

(2) Until final determination of the matter by the court, the service and filing of the petition operates to suspend the emergency order and the authority to make any expenditure or incur any liability thereunder.

(3) Upon the filing of the petition, the court shall immediately fix a time for hearing the petition, which time shall be at the earliest convenient time. At the hearing the court shall hear the matter de novo and may take such testimony as it considers necessary. The court's proceedings shall be summary and informal, and its determination as to whether an emergency such as is contemplated within the meaning and provisions of this part exists or not and whether the expenditure authorized by the order is excessive or not is final.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(part); amd. Sec. 33, Ch. 252, L. 1979.

7-6-4254. Limitation on amount of emergency budgets and appropriations. (1) The total of all emergency budgets and appropriations made therein in any one year and to be paid from any city fund may not exceed 38% of the total amount which could be produced for such city fund by a maximum levy authorized by law to be made for such fund, as shown by the last completed assessment roll of the county.

(2) The term "taxable property", as used herein, means the percentage of the value at which such property is assessed and which percentage is used for the purposes of computing taxes and does not mean the assessed value of such property as the same appears on the assessment roll.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(3); amd. Sec. 42, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "may not exceed 38% of the total amount" for "shall not exceed 25% of the total amount" in the middle of (1).

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval."

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-6-4255. Use of emergency warrants. (1) All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures. The city treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose. If at any time there shall not be sufficient money available in such fund or funds to pay such warrants, then such warrants shall be registered, bear interest, and be called in for payment in the manner provided by law for other city warrants.

(2) The clerk shall include in his annual tabulation to be submitted to the council the total amount of emergency warrants issued during the preceding fiscal year. Subject to the provisions of subsection (3), the council shall, in their tax levies, include a levy for each fund sufficient to raise an

amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same.

(3) (a) No levy shall be made for any fund in excess of the levy authorized by law to be made therefor.

(b) The council may submit the question of funding such emergency warrants at an election as provided by law. If at any such election the issuing of such funding bonds be authorized, it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(5), (6).

Part 43

Claims Against Municipalities

7-6-4301. Presentation of claims against municipality. (1) All accounts and demands against a city or town must be presented to the council, duly itemized. These claims must be presented with all necessary and proper vouchers within 1 year from the date the same accrued. No action may be maintained against the city or town for or on account of any demand or claim against the city or town until such demand or claim has first been presented to the council.

(2) All claims against a city or town shall contain the following statement: "I certify that this claim is correct and just in all respects and that payment or credit has not been received." Claims need not be accompanied by affidavit by the party or his agent.

(3) Any claim or demand not so presented within this time is forever barred, and the council has no authority to allow any account or demand not so presented.

History: En. Sec. 4812, Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907; re-en. Sec. 5078, R.C.M. 1921; re-en. Sec. 5078, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1957; amd. Sec. 25, Ch. 566, L. 1977; R.C.M. 1947, 11-1301(part).

7-6-4302. Payment of claims by warrant. Except as provided in 7-6-4121, all accounts and demands against a city or town must be submitted to the council and, if found correct, must be allowed and an order must be made that the demand be paid. The mayor must draw a warrant upon the treasury in favor of the owner, specifying for what purpose and by what authority it is issued and out of what funds it is to be paid. The city treasurer or town clerk must pay the warrant out of the proper fund.

History: En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R.C.M. 1921; re-en. Sec. 5079, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1973; R.C.M. 1947, 11-1302(part); amd. Sec. 34, Ch. 252, L. 1979.

Part 44

Municipal Taxation

7-6-4401. General taxing power of municipalities. The city or town council has power to levy and collect taxes for general and special purposes on all property within the town or city subject to taxation under the laws of the state.

History: En. Subd. 2, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.1, R.C.M. 1935; R.C.M. 1947, 11-902.

7-6-4402. Tax-related duties of city treasurer. It is the duty of the city treasurer to perform such duties in the collection of taxes, license fees, or assessments as are prescribed by law or ordinance.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part); amd. Sec. 35, Ch. 252, L. 1979.

7-6-4403. Tax-related duties of city clerk. It is the duty of the clerk to perform such duties in and about the assessment, levy, and collection of taxes and assessments as may be prescribed by law or ordinance.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-6-4404. Tax-related duties of town clerk. It is the duty of the town clerk to perform such duties in the collection of taxes, license fees, or assessments as are prescribed by law or ordinance.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part); amd. Sec. 36, Ch. 252, L. 1979.

7-6-4405. Limitation on tax levy for general municipal or administrative purposes. The amount of taxes to be levied for general municipal or administrative purposes in cities and towns may not exceed 2.4% of the taxable value of the property of the city or town subject to taxation.

History: En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M. 1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part).

7-6-4406. Authority to levy special taxes and assessments. The council may also assess and levy the special taxes or assessments provided for in this title.

History: En. Sec. 4815, Pol. C. 1895; re-en. Sec. 3343, Rev. C. 1907; re-en. Sec. 5200, R.C.M. 1921; re-en. Sec. 5200, R.C.M. 1935; R.C.M. 1947, 84-4712.

7-6-4407. Resolution to fix annual tax levy. (1) The council must, on or before the second Monday of August of each year, by resolution determine the amount of the city or town taxes for all purposes to be levied and assessed on the taxable property in the city or town for the current fiscal year.

(2) (a) Except as provided in subsection (2)(b), the city or town clerk must at once certify to the county clerk a copy of such resolution, and the county treasurer must collect said taxes as provided in this part.

(b) In cities where the council has provided by ordinance for the collection of such taxes by the city treasurer, the city clerk must certify a copy of such resolution to said city treasurer.

History: En. Sec. 379, 5th Div. Comp. Stat. 1887; amd. Sec. 4872, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3358, Rev. C. 1907; amd. Sec. 1, Ch. 1, L. 1919; amd. Sec. 1, Ch. 9, Ex. L. 1919; amd. Sec. 1, Ch. 165, L. 1921; re-en. Sec. 5216, R.C.M. 1921; amd. Sec. 1, Ch. 49, L. 1925; re-en. Sec. 5216, R.C.M. 1935; R.C.M. 1947, 84-4729.

7-6-4408. Distribution of tax money. The council or commission in each city or town may distribute the tax money collected for general municipal or administrative purposes into the funds prescribed by ordinance.

History: En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M. 1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part).

7-6-4409. Determination of assessments. (1) The assessment made by the department of revenue or its agent for state and county purposes is the basis of taxation for cities and towns for the property situated therein.

(2) It is the duty of the department or its agent, in making the assessment book, to designate therein the real and personal property, stating each separately and distinctly, situated in cities and towns within each county in the state.

History: (1)En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907; re-en. Sec. 5205, R.C.M. 1921; re-en. Sec. 5205, R.C.M. 1935; amd. Sec. 92, Ch. 405, L. 1973; Sec. 84-4717, R.C.M. 1947; (2)En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895; re-en. Sec. 3349, Rev. C. 1907; re-en. Sec. 5206, R.C.M. 1921; re-en. Sec. 5206, R.C.M. 1935; amd. Sec. 93, Ch. 405, L. 1973; Sec. 84-4718, R.C.M. 1947; R.C.M. 1947, 84-4717, 84-4718.

7-6-4410. Assessment book to be furnished to certain municipalities. (1) On or before the second Monday in July of each year, the department or its agent must furnish to all cities of the third class and towns within each county which shall make written request for the same on or before the first Monday in April of each year a complete certified copy of the assessment book, so far as such assessment book pertains to property within the limits of said cities and towns.

(2) The department may charge such cities and towns 5 cents per folio of 100 words for each copy of the assessment book furnished such cities and towns as provided in subsection (1).

History: (1)En. Sec. 1, Ch. 69, L. 1911; re-en. Sec. 5207, R.C.M. 1921; re-en. Sec. 5207, R.C.M. 1935; amd. Sec. 94, Ch. 405, L. 1973; Sec. 84-4719, R.C.M. 1947; (2)En. Sec. 2, Ch. 69, L. 1911; re-en. Sec. 5208, R.C.M. 1921; re-en. Sec. 5208, R.C.M. 1935; amd. Sec. 95, Ch. 405, L. 1973; Sec. 84-4720, R.C.M. 1947; R.C.M. 1947, 84-4719, 84-4720.

7-6-4411. Equalization of assessments. (1) The equalization of assessments of property made by the department of revenue applies to the assessment of property in any city or town and must be taken as the equalization thereof.

(2) The person aggrieved must first make an affidavit stating the facts, which must be filed with the clerk.

History: (1)En. Sec. 4865, Pol. C. 1895; re-en. Sec. 3351, Rev. C. 1907; re-en. Sec. 5209, R.C.M. 1921; re-en. Sec. 5209, R.C.M. 1935; amd. Sec. 96, Ch. 405, L. 1973; Sec. 84-4721, R.C.M. 1947; (2)En. Sec. 4866, Pol. C. 1895; re-en. Sec. 3352, Rev. C. 1907; re-en. Sec. 5210, R.C.M. 1921; re-en. Sec. 5210, R.C.M. 1935; R.C.M. 1947, 84-4721, 84-4722.

7-6-4412. Preparation of municipal assessment book. (1) It is the duty of the county clerk, on or before the first Monday in October in each year, to make a duplicate of the corrected assessment book for each city in the county, the treasurer of which is required by ordinance of such city to collect its taxes. Such book shall be styled "The Duplicate Assessment

Book for the City of ....” and must contain a copy of the corrected assessment book of the county, as far as the same refers to city property.

(2) Such duplicate must be made in a book furnished by the city clerk of each city in the county and ruled in columns specifying the different funds, so that the city treasurer may extend the same and collect the taxes.

(3) The county clerk must deliver such duplicate assessment book to each city treasurer and take his receipt therefor, having attached thereto the affidavit similar to the one set out in 15-10-306.

History: (1)En. Sec. 4867, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3353, Rev. C. 1907; re-en. Sec. 5211, R.C.M. 1921; re-en. Sec. 5211, R.C.M. 1935; Sec. 84-4723, R.C.M. 1947; (2)En. Sec. 4868, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3354, Rev. C. 1907; re-en. Sec. 5212, R.C.M. 1921; re-en. Sec. 5212, R.C.M. 1935; Sec. 84-4724, R.C.M. 1947; (3)En. Sec. 4869, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3355, Rev. C. 1907; re-en. Sec. 5213, R.C.M. 1921; re-en. Sec. 5213, R.C.M. 1935; Sec. 84-4725, R.C.M. 1947; R.C.M. 1947, 84-4723, 84-4724, 84-4725.

7-6-4413. Collection of taxes. (1) Except in case of such cities of the first, second, and third classes as may provide by ordinance for the city treasurer to collect the taxes from such corrected assessment book, the county treasurer of each county must collect the tax levied by all cities and towns in his respective county.

(2) The county treasurer must collect such city or town taxes, including unpaid road poll taxes, at the same time as the state and county taxes and with the same penalties and interest in case of delinquency.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; re-en. Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R.C.M. 1921; re-en. Sec. 5214, R.C.M. 1935; R.C.M. 1947, 84-4726(part).

7-6-4414. Sales for delinquent taxes when county collects municipal tax. (1) All publications of sales for delinquent taxes shall include city or town taxes. There is only one sale for each piece of property. The sale shall cover the aggregate of city or town, county, and state taxes, with the penalties, interest, and cost of advertising provided by law.

(2) All money received from sales and redemptions, after a deed is given by the county treasurer as provided by law, shall be credited to the state, county, and city or town pro rata in the same proportions as provided in 15-18-108.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; re-en. Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R.C.M. 1921; re-en. Sec. 5214, R.C.M. 1935; R.C.M. 1947, 84-4726(part); amd. Sec. 37, Ch. 252, L. 1979.

7-6-4415 through 7-6-4420 reserved.

7-6-4421. Authorization for tax levy and collection by municipality. (1) The council has power to annually levy and collect taxes on all the property in the city or town taxable for state and county purposes and may by ordinance provide for the levy and collection of the same.

(2) Until the passage of such ordinance, the levy and collection of municipal taxes are and the proceedings for such purposes must be as provided in this part.

History: (1)En. Sec. 4860, Pol. C. 1895; re-en. Sec. 3346, Rev. C. 1907; re-en. Sec. 5203, R.C.M. 1921; re-en. Sec. 5203, R.C.M. 1935; amd. Sec. 90, Ch. 405, L. 1973; Sec. 84-4715, R.C.M. 1947; (2)En. Sec. 4861, Pol. C. 1895; re-en. Sec. 3347, Rev. C. 1907; re-en. Sec. 5204, R.C.M. 1921; re-en. Sec. 5204, R.C.M. 1935; amd. Sec. 91, Ch. 405, L. 1973; Sec. 84-4716, R.C.M. 1947; R.C.M. 1947, 84-4715, 84-4716.

7-6-4422. Authorization for collection of delinquent taxes by municipalities. (1) All cities in Montana which by ordinance provide for the collection of city taxes and assessments are hereby authorized and empowered to solicit payment, ask for, receive, and receipt for delinquent taxes and assessments due any such city.

(2) Upon receipt of payment for delinquent taxes and assessments by the city treasurer of such city, it shall be the duty of such city treasurer to immediately certify to the county treasurer of the county in which such city is situated:

(a) the fact of such payment with the amount thereof;

(b) a description of the property charged with such delinquent taxes or assessments so paid; and

(c) the name of the person to whom the same were assessed.

(3) Nothing in this section is intended to or shall prevent the county treasurer of the county in which such city is situated from collecting such delinquent taxes or assessments, but this section is intended as an aid to the collector of such delinquent taxes and assessments.

History: En. Sec. 1, Ch. 145, L. 1933; re-en. Sec. 5215.2, R.C.M. 1935; R.C.M. 1947, 84-4728.

7-6-4423. Sales for delinquent taxes when municipality collects municipal tax. (1) (a) Whenever, in a city or town whose city treasurer or town clerk collects its own taxes or special assessments or both, any such taxes or assessments shall become delinquent, no tax sale shall be held therefor by such city treasurer or town clerk but such city treasurer or town clerk must, within 10 days after the date the same become delinquent, certify all such delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated.

(b) Such certificate shall contain:

(i) the description of each lot or parcel of land on which any tax or assessment has become delinquent;

(ii) the name and address of the person to whom assessed;

(iii) the date when the same became delinquent;

(iv) the amount of the delinquent tax or assessment, the penalty to be added thereto, and the total amount of such delinquent tax or assessment with penalty added.

(c) If any special assessment is payable in installments and any installment thereof becomes delinquent, the amount of such delinquent installment shall be included in such certificate; provided, however, that if the city or town council, by the adoption of an appropriate resolution, shall declare the whole of the assessment remaining unpaid to be delinquent as provided in 7-12-4181, then the whole of the assessment remaining unpaid shall be included in such certificate.

(2) Upon receipt of such certificate, the county treasurer shall enter such delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes must include all such city and town delinquent taxes and assessments. There shall be but one sale for each piece of property. Such sale shall cover the aggregate of such city or town, county, and state taxes and special assessments, with the penalties, interest, and costs provided by law.

History: En. Sec. 1, Ch. 148, L. 1927; re-en. Sec. 5215.1, R.C.M. 1935; R.C.M. 1947, 84-4727.

7-6-4424 through 7-6-4430 reserved.

7-6-4431. Authorization to exceed maximum mill levy — election required. The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body must pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;
(b) the specific dollar amount to be raised;
(c) the approximate number of mills required; and
(d) the specific mill levy limitation to be exceeded.

(2) The governing body must submit the question of the additional mill levy to the qualified electors of the municipality at the next regular primary or general election on either odd-numbered or even-numbered years. The question may not be submitted more than once in any calendar year. If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years.

History: Ap. p. Sec. 1, Ch. 12, L. 1919; re-en. Sec. 5195, R.C.M. 1921; re-en. Sec. 5195, R.C.M. 1935; Sec. 84-4706, R.C.M. 1947; Ap. p. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R.C.M. 1921; re-en. Sec. 5198, R.C.M. 1935; Sec. 84-4709, R.C.M. 1947; R.C.M. 1947, 84-4706, 84-4709(part); amd. Sec. 38, Ch. 252, L. 1979; amd. Sec. 1, Ch. 614, L. 1979.

7-6-4432. Purpose of additional mill levy to be stated. The submission of the question shall expressly state the purpose for which the additional levy is to be made.

History: En. Sec. 3, Ch. 12, L. 1919; re-en. Sec. 5197, R.C.M. 1921; re-en. Sec. 5197, R.C.M. 1935; R.C.M. 1947, 84-4708(part); amd. Sec. 2, Ch. 614, L. 1979.

7-6-4433. Repealed. Sec. 42, Ch. 252, L. 1979; Sec. 407, Ch. 571, L. 1979; Sec. 8, Ch. 614, L. 1979.

History: En. Sec. 5, Ch. 12, L. 1919; re-en. Sec. 5199, R.C.M. 1921; re-en. Sec. 5199, R.C.M. 1935; R.C.M. 1947, 84-4710.

7-6-4434. Notice of election on question of additional mill levy. Where the question of making an additional levy is submitted to the qualified electors, notice shall be given as provided for in 13-1-108.

History: En. Sec. 2, Ch. 12, L. 1919; re-en. Sec. 5196, R.C.M. 1921; re-en. Sec. 5196, R.C.M. 1935; R.C.M. 1947, 84-4707; amd. Sec. 305, Ch. 571, L. 1979; amd. Sec. 3, Ch. 614, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 571 and Ch. 614, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 571 was a general revision of the election laws and the amendment to this section provided a specific internal reference to the notice provisions. For consistency with other election statutes, the specific language of Ch. 571 was selected for use in the composite, rather than the general reference provided in Ch. 614.

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-6-4435. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R.C.M. 1921; re-en. Sec. 5198, R.C.M. 1935; R.C.M. 1947, 84-4709(part).

7-6-4436. Conduct of election. The election will be conducted as provided by Title 13.

History: En. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R.C.M. 1921; re-en. Sec. 5198, R.C.M. 1935; R.C.M. 1947, 84-4709(part); amd. Sec. 306, Ch. 571, L. 1979; amd. Sec. 5, Ch. 614, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 571 and Ch. 614, L. 1979, and a composite section has been prepared by the Code Commissioner, 1979. Ch. 571 was a general revision of the election laws, and the language of Ch. 571 has been retained in the composite to achieve consistency with other election statutes.

7-6-4437. Use of proceeds from additional mill levy. (1) Except as provided in subsection (2), if authorized, the money raised by the additional levy shall be used only for that specific purpose provided for in 7-6-4432.

(2) If any balance remains on hand after the purpose for which the levy was made has been accomplished, the balance may by vote of the governing body be transferred to any other fund of the municipality.

History: En. Sec. 3, Ch. 12, L. 1919; re-en. Sec. 5197, R.C.M. 1921; re-en. Sec. 5197, R.C.M. 1935; R.C.M. 1947, 84-4708(part); amd. Sec. 6, Ch. 614, L. 1979.

7-6-4438. Tax levy and expenditures for municipal and administrative purposes when limits on municipal indebtedness exceeded. (1) All taxes levied and collected for municipal and administrative purposes by any city or town in which the indebtedness equals or exceeds the limit allowed by statute may be used in payment of current expenses during the fiscal year for which the taxes were levied, as if a special levy had been made for each of the purposes. The council of any such city or town may designate the amount of the general levy applicable to each of the purposes. The amount so designated constitutes a special fund for the special purpose of paying the expenses incurred for the purpose. The expenses shall be payable out of the fund and not otherwise.

(2) However, the aggregate of all taxes authorized for general municipal and administrative purposes may not exceed 1.5% annually of the taxable value of all property subject to taxation in the city or town.

(3) Any city, the indebtedness of which equals or exceeds the limit allowed by statute, may levy and collect special taxes for municipal and administrative purposes, and the city council in making special levies shall designate the amount thereof for each of the purposes, and each tax, when collected, constitutes a fund out of which the expenses incurred for the purpose for which the tax was levied shall be paid. The expenses incurred for any particular purpose shall be paid out of the fund provided therefor and not otherwise.

History: (1), (2)En. Sec. 1, Ch. 21, L. 1903; amd. Sec. 1, Ch. 106, L. 1907; Sec. 3344, Rev. C. 1907; re-en. Sec. 5201, R.C.M. 1921; amd. Sec. 2, Ch. 175, L. 1925; re-en. Sec. 5201, R.C.M. 1935; amd. Sec. 53, Ch. 100, L. 1973; amd. Sec. 89, Ch. 405, L. 1973; amd. Sec. 58, Ch. 566, L. 1977; Sec. 84-4713, R.C.M. 1947; (3)En. Sec. 2, Ch. 21, L. 1903; re-en. Sec. 3345, Rev. C. 1907; re-en. Sec. 5202, R.C.M. 1921; re-en. Sec. 5202, R.C.M. 1935; Sec. 84-4714, R.C.M. 1947; R.C.M. 1947, 84-4713, 84-4714; amd. Sec. 39, Ch. 252, L. 1979.

7-6-4439. Emergency provisions not affected. Nothing in 7-6-4431 through 7-6-4437 shall affect the emergency expenditures provided by law.

History: En. Sec. 7, Ch. 614, L. 1979.

7-6-4440 through 7-6-4450 reserved.

7-6-4451. All-purpose mill levy authorized. It is the purpose of 7-6-4451 through 7-6-4455 to authorize and empower the cities and towns of Montana, at their option, to make an all-purpose annual mill levy in lieu of the multiple levies now authorized by the statutes of Montana.

History: En. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971; R.C.M. 1947, 84-4701.1(part).

7-6-4452. Maximum all-purpose mill levy. Except as provided elsewhere, the cities and towns of the state of Montana may make an all-purpose annual levy upon the taxable value of all the property in the cities and towns subject to taxation for municipal purposes in lieu of the multiple levies now authorized by statute. The total of the all-purpose levy may not exceed 65 mills on the dollar.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(part).

7-6-4453. Certain special mill levies also available. (1) The all-purpose mill levy shall not and may not include the levies imposed for bonded indebtedness, to pay judgments, or for special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy, as provided in subsection (2). Sections 7-6-4451 through 7-6-4455 shall not be construed as repealing those statutes providing for multiple separate levies.

(2) Extraordinary levies otherwise authorized to pay for bonded indebtedness, judgments, or special improvement district revolving funds may be made by such municipalities in addition to such all-purpose levy provided in 7-6-4451 through 7-6-4455.

History: Ap. p. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971; Sec. 84-4701.1, R.C.M. 1947; Ap. p. 84-4701.6 by Sec. 1, Ch. 145, L. 1967; amd. Sec. 5, Ch. 375, L. 1971; Sec. 84-4701.6, R.C.M. 1947; Ap. p. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; Sec. 84-4701.2, R.C.M. 1947; R.C.M. 1947, 84-4701.1(part), 84-4701.2(part), 84-4701.6.

7-6-4454. Certification of all-purpose levy to county officers. In the event that it is necessary to certify such a municipal levy to county officers for collection, the same shall be certified as an all-purpose levy.

History: En. Sec. 5, Ch. 82, L. 1965; amd. Sec. 4, Ch. 375, L. 1971; R.C.M. 1947, 84-4701.5.

7-6-4455. Changes from all-purpose levy method. Any municipality electing to follow the all-purpose levy method provided for in 7-6-4452 shall be bound by that election during the ensuing fiscal year but may abandon such method in succeeding fiscal years.

History: En. Sec. 4, Ch. 82, L. 1965; R.C.M. 1947, 84-4701.4.

Part 45

Municipal Warrants

7-6-4501. Interest on unpaid warrants. When any warrant drawn upon the treasury of a city or town and pursuant to any ordinance or resolution or direction of the council of the city or town is presented to the city treasurer or town clerk for payment and the same is not paid for want of funds, the city treasurer or town clerk must endorse thereon "Not paid for want of funds", annexing the date of presentation, and signing his name thereto. From that time until the warrant is called for payment, the warrant bears interest at a rate fixed by ordinance.

History: En. Sec. 1, p. 75, L. 1897; re-en. Sec. 3284, Rev. C. 1907; re-en. Sec. 5081, R.C.M. 1921; re-en. Sec. 5081, R.C.M. 1935; amd. Sec. 12, Ch. 234, L. 1971; R.C.M. 1947, 11-1307; amd. Sec. 40, Ch. 252, L. 1979.

7-6-4502. Call for payment of warrants drawing interest. (1) When there is money in the city or town treasury applicable to the payment of any warrants drawing interest and sufficient to pay the same, the city treasurer or town clerk must give notice in some newspaper published in such city or town or, if none is published therein, then by written notice posted in a conspicuous place on the outer door of the office of the city treasurer or town clerk, stating that he is ready to pay the said warrants and giving the number of the warrants to be paid.

(2) The warrants so called shall cease to draw interest from the time of the first publication or posting of such notice.

History: En. Sec. 2, p. 75, L. 1897; re-en. Sec. 3285, Rev. C. 1907; re-en. Sec. 5082, R.C.M. 1921; re-en. Sec. 5082, R.C.M. 1935; R.C.M. 1947, 11-1308.

7-6-4503. Registration of warrants. Upon the presentation of any warrant endorsed as specified in 7-6-4501, it shall be the duty of the city treasurer or town clerk to record, in a book to be provided for that purpose, the warrant, the date of such presentation, the number and date of the warrant, to whom payable, the fund on which drawn, and the amount thereof.

History: En. Sec. 3, p. 76, L. 1897; re-en. Sec. 3286, Rev. C. 1907; re-en. Sec. 5083, R.C.M. 1921; re-en. Sec. 5083, R.C.M. 1935; R.C.M. 1947, 11-1309(part).

7-6-4504. Order of redemption of warrants. All warrants to be redeemed as provided for in 7-6-4502 shall be redeemed in the order of their registration, beginning with the date of the warrant first so registered.

History: En. Sec. 3, p. 76, L. 1897; re-en. Sec. 3286, Rev. C. 1907; re-en. Sec. 5083, R.C.M. 1921; re-en. Sec. 5083, R.C.M. 1935; R.C.M. 1947, 11-1309(part).

Part 46

Deposit and Investment of Municipal Money

7-6-4601. Deposit of public money. It shall be the duty of the city treasurer or town clerk, whichever is appropriate, to deposit all public money in his possession and under his control, except such as may be required for current business, in any solvent bank or banks located in such city or town and subject to national supervision or state examination, as the council shall designate, and no other.

History: Ap. p. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; Ap. p. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; re-en. Sec. 5034, R.C.M. 1935; Sec. 11-807, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-807(part).

7-6-4602. Interest rate on deposited public money. Public money deposited pursuant to 7-6-4601 shall bear interest at the rate of 2 ½% per annum, payable quarter-annually.

History: **Ap. p. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; Ap. p. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; re-en. Sec. 5034, R.C.M. 1935; Sec. 11-807, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-807(part).**

7-6-4603. Investment of municipal money in city or town warrants. (1) Except as provided in 7-7-4102, whenever the city or town has, under its control and in any fund, any money for which there is no immediate demand and which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council may direct the city treasurer or town clerk to purchase legally issued city or town general obligation warrants of the same city or town thereafter issued against funds in which there is not sufficient funds to pay such city or town warrants at the time of issuance.

(2) (a) In case of such purchase, the city or town council shall designate the fund or funds to be invested and shall fix the amount thereof and shall also designate the city or town warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to or stamped, written, or printed upon the warrants ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant.

(b) The city treasurer or town clerk shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council. The warrant so purchased shall be registered as other city or town warrants and bear interest as provided by law.

(3) When the designated amounts have been invested, the city treasurer shall notify the city clerk.

History: **En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969; R.C.M. 1947, 11-1310(1); amd. Sec. 41, Ch. 252, L. 1979.**

CHAPTER 7

DEBT MANAGEMENT

Part 1 — General Provisions Related to Local Governments

Section

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7-7-2225. Filing of petition with election administrator — certificate.
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7-7-2228. Time of holding election on question of issuing bonds.
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7-7-4630. Right to receivership upon default.
7-7-4631. Role of receiver.
7-7-4632. Procedure to return enterprise from receiver to municipality.
7-7-4633. Remedies of holders of refunding revenue bonds.

Part 1

General Provisions Related to Local Governments

7-7-101. Submission of local government general obligation bond proceedings to attorney general for review. The governing body of any county, city, or town shall submit a certified copy of all proceedings preliminary to the issue of general obligation bonds to the attorney general, together with such other proceedings, certificates, and records as he may require, and request his report as to validity.

History: **En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part); amd. Sec. 1, Ch. 248, L. 1979.**

7-7-102. Reason for review by attorney general. Sections 7-7-101 through 7-7-104 are intended to improve the marketability of general obligation bonds issued by counties, cities, or towns in order that these bonds may be sold upon the most favorable terms.

History: **En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part); amd. Sec. 2, Ch. 248, L. 1979.**

7-7-103. Review by attorney general — report. (1) The attorney general shall examine certified copies of all proceedings preliminary to the issuance of general obligation bonds by any county, city, or town which are submitted to him for such examination, and if the proceedings are found to be regular and valid, he shall deliver to the recording officer of the local government a report of his examination and determination.

(2) A certified copy of the report shall be filed with the officer required by law to register the bonds, and a notation thereof shall be entered in the bond register.

History: **En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part); amd. Sec. 3, Ch. 248, L. 1979.**

7-7-104. Limitation on action to test bond validity. No local government general obligation bond of any issue, whereof the preliminary proceedings have been submitted to and approved by the attorney general, may be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity thereof is brought within 30 days after the date of sale.

History: **En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412; amd. Sec. 4, Ch. 248, L. 1979.**

7-7-105. Challenges to local government bond elections. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any county, city, town, or political subdivision of the state or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the order, resolution, or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or in holding the election. No defense based upon any such defect, irregularity, or informality may be interposed in any action unless brought within this period. This subsection applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

(2) (a) Any elector qualified to vote in a bond election of a county, a city, or any political subdivision of either may contest a bond election for any of the following causes:

(i) that the precinct board, in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(ii) that any official charged with a duty under the election laws failed to perform that duty;

(iii) that in conducting the election, any official charged with a duty under the election laws violated any of the provisions of Title 13 relating to bond elections;

(iv) that electors qualified to vote in the election under the provisions of the constitutions of Montana and the United States were not given opportunity to vote in the election;

(v) that electors not qualified to vote in the election under the provisions of the constitutions of Montana and the United States were permitted to vote in the election.

(b) Within 60 days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

History: (1)En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; Sec. 93-2612, R.C.M. 1947; (2)En. Sec. 212, Ch. 368, L. 1969; amd. Sec. 6, Ch. 158, L. 1971; Sec. 23-4201, R.C.M. 1947; (3)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 23-4201, 93-2612(part), 93-2720; amd. Sec. 1, Ch. 212, L. 1979.

7-7-106. Hearing and determination on challenge. (1) Within 5 days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order and shall serve the citation immediately upon the defendant either:

(a) personally; or

(b) if the party cannot be found, by leaving a copy at the house where he last resided.

(3) The court shall meet at the time and place designated to determine the contested election and shall have all the powers necessary to the determination thereof.

(4) The court shall be governed by the rules of law and evidence governing the determination of questions of law and fact so far as the same may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within 10 days after submission thereof, the court shall file its findings of fact and conclusions of law and shall immediately pronounce judgment in the premises, either confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

History: En. Sec. 213, Ch. 368, L. 1969; R.C.M. 1947, 23-4202.

7-7-107. Limitation on amount of bonds for city-county consolidated units. (1) Except as provided in 7-7-108, no city-county consolidated local government may issue bonds for any purpose which, with all outstanding indebtedness, may exceed 39% of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

History: En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part); amd. Sec. 43, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Increased the bond indebtedness limitation from 27% to 39% of the taxable value in (1).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval."

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-7-108. Authorization for additional indebtedness for water or sewer systems. (1) For the purpose of constructing a sewer system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional indebtedness which may be incurred by borrowing money or issuing bonds for the construction of a sewer system or for the procurement of a water supply or for both such purposes may not in the aggregate exceed 10% over and above the 39% referred to in 7-7-107 of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes.

History: En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part); amd. Sec. 44, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Increased the bond indebtedness limitation from 27% to 39% of the taxable value in (2).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval."

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-7-109. Sale of notes in anticipation of federal or state revenue. (1) As used in this section, the following definitions apply:

(a) "Bonds" means bonds, notes, warrants, debentures, certificates of indebtedness, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(b) "Political subdivision" means a county, city, town, school district, irrigation district, special improvement district, or any other political subdivision of the state, but does not include the state or any board, agency, or commission of the state.

(c) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(2) When all conditions exist precedent to the offering for sale of bonds of a political subdivision in any amount and for any purpose authorized by law and the political subdivision has applied for a grant or loan of state or federal funds to aid in payment of costs incurred or to be incurred for the authorized purpose, its governing body may by resolution issue and sell notes in anticipation of the receipt of the grant or loan, in an amount not exceeding the total amount of bonds authorized and maturing within not more than 3 years from the date such notes are issued.

(3) The proceeds of the grant or loan, when received, shall be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due.

(4) Any amount of the notes which cannot be paid at maturity from the proceeds of the grant or loan or from any other funds appropriated by the governing body for the purpose shall be paid from the proceeds of bonds to be issued and sold before the maturity date, or if sufficient funds are not available for payment in full of the notes at maturity, those bondholders may require the issuance, in exchange, of bonds bearing interest at the maximum rate permitted by law. The bonds so issued are secured and subject to the terms and conditions provided by the law authorizing their issuance. Notes and bonds may be issued as provided in this section regardless of the amount authorized if the amount which may legally be issued is less than the commitment for which the grant or loan is made. Before the notes or bonds are issued, the political subdivision must receive a written commitment for a grant or loan in an amount equal to the remaining estimated costs and must by resolution provide for the fulfillment of the conditions of the commitment.

History: En. Secs. 1, 2, Ch. 181, L. 1979.

7-7-110 through 7-7-120 reserved.

7-7-121. Misconduct in relation to bond funds. (1) (a) Except as provided in subsection (1)(b), when any officer or officers or board or body of officers of any county, city, or other municipal or public corporation of the state are or shall be required by law to provide by a levy of taxes or by certifying the amount of money required or otherwise a sinking fund or fund required to pay at maturity any bonds hereafter issued or created, such officer or officers and the members of such board or body of officers shall be jointly and severally liable to the county, city, or other municipal or public corporation which they represent if they shall fail to perform any such duties required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty.

(b) When any such board shall fail or neglect to perform any such duty, no minority member of said board who shall have moved said board or voted in favor of a performance of such duty shall be held liable.

(2) Any person or persons who shall take, use, or appropriate or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly

and severally liable to the county, city, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: **(1)En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; Sec. 59-534, R.C.M. 1947; (2)En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; Sec. 59-535, R.C.M. 1947; R.C.M. 1947, 59-534(part), 59-535(part).**

7-7-122. Prosecution for misconduct. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created in 7-7-121. Such actions shall be tried as civil actions at law.

History: **En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.**

7-7-123. Investment of sinking funds of local governments. (1) (a) Except as provided in 7-7-124 and whenever outstanding bonds cannot be purchased pursuant to 7-7-2270 or 7-7-4270, the board of county commissioners of a county and the council or commission of a city or town shall invest so much of the bond sinking funds of the county, city, or town as is not needed for the payment of bonds or interest coupons in general obligation bonds or securities of the United States; state bonds or securities; time or savings deposits; county, city, or school district bonds; county or city warrants; or other bonds or securities which are supported by general taxation, except irrigation district bonds and special improvement district or maintenance district bonds or warrants. All those investments must first be approved by the department of administration.

(b) All those bonds, securities, or time or savings deposits must be due and payable at least 60 days before the obligations for the payment of which the sinking fund was established are due and payable.

(2) The bonds, securities, and any time or savings deposits in which any sinking funds are invested shall be kept in the custody of the county or city treasurer or town clerk and held by him for the benefit of the county, city, or town. The treasurer shall properly protect the bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which is a proper charge against the county, city, or town.

(3) All money derived from interest on sinking fund investments as authorized by this section shall be credited by the treasurer of the county or city or the town clerk to the sinking fund for which the investment was made.

History: **En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 1, Ch. 256, L. 1979; amd. Sec. 7, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (1)(a).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 7-7-123 . . . are transferred to the department of administration."

7-7-124. Limitation on investment of sinking funds. If any of the bonds for which the sinking fund was established are not yet due but are then redeemable under optional provisions, the money in the sinking fund is not subject to investment but shall be used and applied in payment and redemption of the bonds.

History: En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 2, Ch. 256, L. 1979.

Parts 2 through 20 reserved

Part 21

General Provisions Related to Counties

7-7-2101. Limitation on amount of county indebtedness. (1) No county may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 23% of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(2) No county may incur indebtedness or liability for any single purpose to an amount exceeding $150,000 without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R.C.M. 1921; re-en. Sec. 4447, R.C.M. 1935; amd. Sec. 1, Ch. 486, L. 1973; amd. Sec. 1, Ch. 19, L. 1975; amd. Sec. 35, Ch. 566, L. 1977; R.C.M. 1947, 16-807(part); amd. Sec. 4, Ch. 134, L. 1981; amd. Sec. 45, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 134 increased indebtedness amount in (2) from $40,000 to $150,000.

Chapter 614 increased the indebtedness limitation from 18% to 23% of the taxable value in (1).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval." Approved May 7, 1981.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-7-2102. Effect of exceeding limits on indebtedness. All bonds or obligations in excess of such amount given by or on behalf of the county are void.

History: En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R.C.M. 1921; re-en. Sec. 4447, R.C.M. 1935; amd. Sec. 1, Ch. 486, L. 1973; amd. Sec. 1, Ch. 19, L. 1975; amd. Sec. 35, Ch. 566, L. 1977; R.C.M. 1947, 16-807(part).

7-7-2103. Restriction on use of county credit by private persons. No county must ever give or loan its credit in aid of or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation or become a subscriber to or a shareholder in any company or corporation or a joint owner with any person, company, or corporation.

History: En. Sec. 4194, Pol. C. 1895; re-en. Sec. 2874, Rev. C. 1907; re-en. Sec. 4445, R.C.M. 1921; Cal. Pol. C. Sec. 4004; re-en. Sec. 4445, R.C.M. 1935; R.C.M. 1947, 16-805.

7-7-2104. Replacement of lost bond, warrant, or coupon. (1) The board may issue a duplicate warrant, bond, or coupon whenever any warrant, bond, or coupon drawn by it upon the treasury of the county is lost or destroyed. The duplicate warrant, bond, or coupon must be in the same form as the original and will take the place in order of registration and payment of and supersede the original bond, warrant, or coupon. It must have the word "duplicate" plainly printed across its face.

(2) No duplicate warrant, bond, or coupon may be issued under this section unless the person entitled to receive the duplicate deposits with the county treasurer a bond in double the amount for which the duplicate warrant, bond, or coupon is issued, conditioned to render the county and its officers harmless from all loss, costs, or damages by reason of issuing the duplicate.

(3) No bond of indemnity is required:

(a) when a payee is the state of Montana or any agency, instrumentality, or officer of the state;

(b) when the owner or custodian is the state or any agency or officer thereof;

(c) when the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the state;

(d) when it can be established that a crime has been committed and that as a result of such crime a county warrant, bond, or coupon has been stolen or destroyed; or

(e) when it can be established that a county warrant, bond, or coupon has been mailed to an incorrect payee.

(4) If the owner or custodian applies under the provisions of subsection (3)(d) or (3)(e), a stop-payment order shall be placed on the original warrant, bond, or coupon by the county treasurer.

(5) If the owner or custodian applies under the provisions of subsection (3)(c), (3)(d), or (3)(e), the application shall include an agreement to indemnify and hold the county or its officers and employees harmless from any loss resulting from the issuance of a duplicate warrant, bond, or coupon. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived.

History: En. Secs. 1, 3, 4, p. 83, L. 1881; re-en. Secs. 4251, 4253, 4254, Pol. C. 1895; re-en. Secs. 2916, 2918, 2919, Rev. C. 1907; re-en. Secs. 4626, 4628, 4629, R.C.M. 1921; re-en. Secs. 4626, 4628, 4629, R.C.M. 1935; R.C.M. 1947, 16-2003, 16-2005, 16-2006; amd. Sec. 1, Ch. 110, L. 1979.

7-7-2105. Repealed. Sec. 3, Ch. 110, L. 1979.

History: En. Sec. 2, p. 83, L. 1881; re-en. Sec. 4252, Pol. C. 1895; re-en. Sec. 2917, Rev. C. 1907; re-en. Sec. 4627, R.C.M. 1921; re-en. Sec. 4627, R.C.M. 1935; R.C.M. 1947, 16-2004.

7-7-2106. Procedure if original bond, warrant, or coupon is presented. It is the duty of the county treasurer, upon the production to him of any original bond, warrant, or coupon by the lawful owner or holder thereof, to assign by endorsement and to deliver to him the surety bond mentioned in 7-7-2104. Such owner or holder may maintain an action in his own name upon such surety bond for the recovery of any money paid upon such duplicate, but the delivery of such surety bond does not relieve or exonerate the county from the payment of the amount specified therein upon a demand and refusal of the sureties named in the indemnifying surety bond to pay the same.

History: **En. Sec. 5, p. 83, L. 1881; re-en. Sec. 4255, Pol. C. 1895; re-en. Sec. 2920, Rev. C. 1907; re-en. Sec. 4630, R.C.M. 1921; re-en. Sec. 4630, R.C.M. 1935; R.C.M. 1947, 16-2007; amd. Sec. 2, Ch. 110, L. 1979.**

7-7-2107 through 7-7-2110 reserved.

7-7-2111. Authorization to issue construction bonds. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to issue on the credit of the county coupon bonds to an amount sufficient to secure the necessary funds for the procurement of necessary building sites, for the construction of necessary public buildings, and for the construction of bridges and highways, in accordance with the provisions of the code.

History: **En. Subd. 27, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.26, R.C.M. 1935; R.C.M. 1947, 16-1029.**

7-7-2112. Investment of certain construction bond proceeds. (1) Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings or for other construction may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes, or United States treasury bonds having a maturity date of 1 year or less, when emergency conditions beyond the control of the county commissioners exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made.

(2) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(3) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: **En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(part).**

Part 22

County General Obligation Bonds

7-7-2201. Purposes for which general obligation bonds of a county may be issued. The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part, for any of the following purposes:

(1) acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control, and maintain;

(2) acquiring land for any other public use or activity within the county, under its control and authorized by law;

(3) constructing, erecting, or acquiring by purchase necessary public buildings within the county, under its control and authorized by law; making additions to and repairing buildings; and furnishing and equipping the same;

(4) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(5) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line;

(6) funding, paying, and retiring outstanding county warrants lawfully issued against the county general fund, road fund, bridge fund, or poor fund when:

(a) there is not sufficient money in the fund against which such warrants are drawn to pay and retire such warrants; and

(b) the levying of taxes sufficient to pay and retire such warrants within a period of 3 years would, in the judgment of the board, work a hardship and be an undue burden upon the taxpayers of the county.

History: En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part).

7-7-2202. Authority to issue general obligation bonds to satisfy judgments. (1) The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part, for the purpose of funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction when:

(a) there are not sufficient funds available to pay such judgment; and

(b) sufficient money cannot be raised to satisfy such judgment by an annual tax levy of 10 mills levied on all the taxable property within the county through a period of 3 years.

(2) The resolution providing for the issue of such bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the board and the judgment creditor.

History: En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part).

7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) and (3), no county may issue general obligation bonds for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed

11.25% of the taxable value of the property therein, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants, will exceed 11.25% but will not exceed 37% of the taxable value of such property, when necessary to do so, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) The foregoing limitation shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932.

History: **En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; re-en. Sec. 4630.3, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973; R.C.M. 1947, 16-2010(part); amd. Sec. 1, Ch. 332, L. 1979; amd. Sec. 1, Ch. 617, L. 1979; amd. Sec. 46, Ch. 614, L. 1981.**

Compiler's Comments

1981 Amendment: Increased 9% to 11.25% wherever it appears; and increased 29% to 37% in (2).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval."

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

Effective date: Sec. 3, Ch. 332, L. 1979, provided: "This act is effective on passage and approval." Approved March 27, 1979.

7-7-2204. Effect of issuing bonds in excess of limitations on amount. All bonds issued by any county in excess of the limitations fixed in 7-7-2203 shall be null and void.

History: **En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; re-en. Sec. 4630.3, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973; R.C.M. 1947, 16-2010(part).**

7-7-2205. Nature of general obligation bonds. All bonds issued under the provisions of this part shall be legal and valid obligations of the county issuing the same, and the full faith and credit of such county are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same become due.

History: **En. Sec. 23, Ch. 188, L. 1931; re-en. Sec. 4630.23, R.C.M. 1935; R.C.M. 1947, 16-2037.**

7-7-2206. Term of general obligation bonds. (1) No bonds issued for any of the purposes designated in 7-7-2201(1) through (4) shall be for a longer term than 20 years.

(2) No bonds issued for any of the purposes designated in 7-7-2201(5) and (6) shall be for a longer term than 10 years.

(3) Bonds issued for any of the purposes designated in 7-7-2202 shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of 10 mills on all the property within the county subject to taxation, and the term shall not exceed 20 years.

(4) The length of the term required shall be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).

7-7-2207. Redemption of bonds. All bonds issued for a longer term than 5 years shall be redeemable at the option of the county on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so stated on the face of the bonds.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).

7-7-2208. *(Suspended)* **Bond interest rate.** The maximum rate of interest which any of such bonds may bear shall be 7% per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).

Compiler's Comments

Suspension: Section 20, Ch. 500, L. 1981, provided: "The operation of sections 7-7-2208 and 7-7-4207, MCA, is suspended until July 1, 1983."

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

7-7-2209. Types of bonds. All bonds hereafter issued by any county shall be either amortization bonds or serial bonds. All things being equal, amortization bonds shall be issued in preference to serial bonds, otherwise serial bonds may be issued.

History: En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part).

7-7-2210. Amortization bonds. The term "amortization bonds", as used in this part, is hereby defined as meaning that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

History: En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part).

7-7-2211. Serial bonds. The term "serial bonds", as used in this part, is hereby defined as being a bond issue payable in equal annual installments, one installment consisting of one or more bonds, becoming due and payable each year (the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run), so that the total amount of principal to be paid each year the bonds are to run will be the same; provided, however, that the installments becoming due and payable the first year or the first and second years may vary in amount from the others to the extent resulting from fixing the amount of each bond of the other installments at $100, $500, or $1,000, as may be determined by the board of county commissioners.

History: En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part).

7-7-2212 through 7-7-2220 reserved.

7-7-2221. Issuance of certain general obligation bonds without election. Bonds may be issued without submitting the same to an election if the bonds are issued for the purpose of:

(1) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of a county boundary line, as set forth in 7-7-2201(5); and

(2) funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, as set forth in 7-7-2202.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2222. Procedure to issue bonds without election. (1) In order to issue bonds for any of the purposes referred to in 7-7-2221 and 7-7-2311, it shall only be necessary for the board of county commissioners, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be paid or bonds to be refunded, showing the reason for issuing such bonds and fixing and determining the details thereof, and give notice of the sale thereof in the same manner that notice is required to be given of the sale of bonds authorized at an election and to then follow the procedure prescribed in this part for the sale and issuance of such bonds.

(2) All bonds sold without submitting the question of their issue to an election, as authorized in 7-7-2221 and 7-7-2311, shall be sold at open competitive bidding, but all sealed and written bids submitted for the purchase of such bonds shall be considered the same as open bids.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2223. Petition and election required for issuance of certain bonds. (1) County bonds for any purpose other than those enumerated in

7-7-2221 and 7-7-2311 may not be issued unless authorized at a duly called special or general election at which the question of issuing such bonds is submitted to the registered electors of the county and approved as provided in 7-7-2237.

(2) No bond election may be called unless the board of county commissioners receives a petition, delivered and certified by the election administrator, asking that such election be held and the question be submitted. The petition must be signed by at least 20% of the registered electors of the county.

History: En. Secs. 7, 8, Ch. 188, L. 1931; re-en. Secs. 4630.7, 4630.8, R.C.M. 1935; amd. Secs. 12, 13, Ch. 158, L. 1971; amd. Secs. 1, 2, Ch. 347, L. 1977; R.C.M. 1947, 16-2021(1), 16-2022(part); amd. Sec. 307, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-7-2224. Form and contents of petition. (1) Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in the petition.

(2) The petition shall be in the form provided in Title 13, chapter 27.

History: En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; R.C.M. 1947, 16-2022(part); amd. Sec. 308, Ch. 571, L. 1979.

7-7-2225. Filing of petition with election administrator — certificate. (1) The completed petition shall be filed with the election administrator. The election administrator shall, within 15 days thereafter, carefully examine the petition and the county records showing the qualifications of the petitioners and attach a certificate, under his official signature and the seal of his office.

(2) The certificate shall set forth:

(a) the total number of individuals who are registered electors;

(b) which and how many of the individuals whose names are subscribed to the petiton possess all of the qualifications required of signers of such a petition;

(c) whether such qualified signers constitute more or less than 20% of the registered electors of the county.

History: En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; R.C.M. 1947, 16-2022(part); amd. Sec. 309, Ch. 571, L. 1979.

7-7-2226. Delivery of certified petition to board of county commissioners. (1) After completing the certificate required by 7-7-2225, the election administrator shall deliver the certified petition to the board of county commissioners.

(2) When the petition has been filed with the election administrator and he has found that it has a sufficient number of signers qualified to sign it,

he shall place it before the board at its first meeting held after he has attached his certificate thereto.

History: (1)En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; Sec. 16-2022, R.C.M. 1947; (2)En. Sec. 9, Ch. 188, L. 1931; re-en. Sec. 4630.9, R.C.M. 1935; Sec. 16-2023, R.C.M. 1947; R.C.M. 1947, 16-2022(3), 16-2023(part); amd. Sec. 310, Ch. 571, L. 1979.

7-7-2227. Examination of petition — resolution calling for election. (1) Upon delivery of the certified petition, the board shall carefully examine the petition and make such other investigation as it may consider necessary. If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution.

(2) The resolution shall:

(a) recite the essential facts in regard to the petition and its filing and presentation and the purpose or purposes for which the bonds are proposed to be issued;

(b) fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition;

(c) determine the number of years through which such bonds are to be paid, not exceeding the limitations fixed in 7-7-2206; and

(d) make provision for having the question submitted to the registered electors of the county at the next general election or at a special election which the board may call for that purpose.

History: En. Sec. 9, Ch. 188, L. 1931; re-en. Sec. 4630.9, R.C.M. 1935; R.C.M. 1947, 16-2023(part); amd. Sec. 311, Ch. 571, L. 1979.

7-7-2228. Time of holding election on question of issuing bonds. The bond election required by 7-7-2223 may not be held any sooner than 90 days after receipt of the petition by the county commissioners and must be held no later than the first general election following the 90-day period.

History: En. Sec. 7, Ch. 188, L. 1931; re-en. Sec. 4630.7, R.C.M. 1935; amd. Sec. 12, Ch. 158, L. 1971; amd. Sec. 1, Ch. 347, L. 1977; R.C.M. 1947, 16-2021(2); amd. Sec. 312, Ch. 571, L. 1979.

7-7-2229. Notice of election. (1) Whether such election is held at the general election or at a special election, separate notice shall be given thereof.

(2) (a) The notice shall state:

(i) the date when the election will be held;

(ii) the hours between which the polls will be open;

(iii) the amount of bonds proposed to be issued;

(iv) the purpose of the issue;

(v) the term of years through which the bonds are to be paid; and

(vi) such other information regarding the holding of the election and the bonds proposed to be issued as the board may consider proper.

(b) If bonds are to be issued for two or more purposes, each purpose and the amount therefor must be separately stated.

(3) The notice shall be published as provided in 13-1-108.

History: En. Sec. 10, Ch. 188, L. 1931; re-en. Sec. 4630.10, R.C.M. 1935; R.C.M. 1947, 16-2024(part); amd. Sec. 313, Ch. 571, L. 1979.

7-7-2230 through 7-7-2236. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments
Histories of Repealed Sections:

7-7-2230. En. Sec. 10, Ch. 188, L. 1931; re-en. Sec. 4630.10, R.C.M. 1935; R.C.M. 1947, 16-2024(part).

7-7-2231. En. Sec. 10, Ch. 188, L. 1931; re-en. Sec. 4630.10, R.C.M. 1935; R.C.M. 1947, 16-2024(part).

7-7-2232. (1)En. Sec. 1, p. 13, L. 1901; re-en. Sec. 2938, Rev. C. 1907; re-en. Sec. 4722, R.C.M. 1921; re-en. Sec. 4722, R.C.M. 1935; Sec. 16-2306, R.C.M. 1947; (2)En. Sec. 11, Ch. 188, L. 1931; re-en. Sec. 4630.11, R.C.M. 1935; Sec. 16-2025, R.C.M. 1947; R.C.M. 1947, 16-2025(part), 16-2306(part).

7-7-2233. En. Sec. 12, Ch. 188, L. 1931; re-en. Sec. 4630.12, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959; amd. Sec. 14, Ch. 158, L. 1971; R.C.M. 1947, 16-2026(part).

7-7-2234. En. Sec. 12, Ch. 188, L. 1931; re-en. Sec. 4630.12, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959; amd. Sec. 14, Ch. 158, L. 1971; R.C.M. 1947, 16-2026(part).

7-7-2235. (1)En. Sec. 1, p. 13, L. 1901; re-en. Sec. 2938, Rev. C. 1907; re-en. Sec. 4722, R.C.M. 1921; re-en. Sec. 4722, R.C.M. 1935; Sec. 16-2306, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 188, L. 1931; re-en. Sec. 4630.11, R.C.M. 1935; Sec. 16-2025, R.C.M. 1947; R.C.M. 1947, 16-2025(part), 16-2306(part).

7-7-2236. En. Sec. 14, Ch. 188, L. 1931; re-en. Sec. 4630.14, R.C.M. 1935; amd. Sec. 1, Ch. 210, L. 1961; R.C.M. 1947, 16-2028(part).

7-7-2237. Percentage of electors required to authorize bond issue. (1) Whenever the question of issuing county bonds for any purpose is submitted to the registered electors of a county at either a general or special election, not less than 40% of the registered electors entitled to vote on the question must vote thereon; otherwise, the proposition shall be considered to have been rejected.

(2) If 40% or more of the registered electors do vote on the question at the election and a majority of the votes shall be cast in favor of the proposition, then the proposition shall be considered to have been approved and adopted.

History: En. Sec. 13, Ch. 188, L. 1931; re-en. Sec. 4630.13, R.C.M. 1935; R.C.M. 1947, 16-2027; amd. Sec. 314, Ch. 571, L. 1979.

7-7-2238. Resolution to issue bonds. (1) If it is found that at the bonding election 40% or more of the qualified electors entitled to vote at such election voted on such question and that a majority of such votes were cast in favor of the issuing of such bonds, the board of county commissioners shall, at a regular or special meeting held within 30 days thereafter, pass and adopt a resolution providing for the issuance of such bonds.

(2) Such resolution shall recite:

(a) the purpose for which such bonds are to be issued;

(b) the amount thereof;

(c) the maximum rate of interest the bonds may bear;

(d) the date they shall bear;

(e) the period of time through which they shall be payable; and

(f) the optional provisions, if any.

(3) Such resolution shall provide for the manner of the execution of the bonds. It shall provide that preference shall be given amortization bonds, but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form. The board may in its discretion provide that such bonds may be issued and sold in two or more series or installments.

(4) The resolution shall adopt a form of notice of the sale of the bonds.

History: En. Sec. 14, Ch. 188, L. 1931; re-en. Sec. 4630.14, R.C.M. 1935; amd. Sec. 1, Ch. 210, L. 1961; R.C.M. 1947, 16-2028(part).

7-7-2239. Rescission of resolution authorizing bond issue. If none of said bonds have been sold and issued within 3 years from the date of the bonding election and no vested rights have accrued thereunder, the board of county commissioners may rescind the authority to sell and issue such bonds by the passage and adoption of a resolution wherein is recited the reason for such rescission of authority.

History: En. Sec. 14, Ch. 188, L. 1931; re-en. Sec. 4630.14, R.C.M. 1935; amd. Sec. 1, Ch. 210, L. 1961; R.C.M. 1947, 16-2028(part).

7-7-2240 through 7-7-2250 reserved.

7-7-2251. *(Temporary)* **Form of notice of sale of bonds.** The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of .... County, state of Montana, that the board will on the .... day of ...., 19.., at the hour of ....m., at the office of the board in the courthouse in the (town or city) of .... in the said county, sell to the highest and best bidder for cash, either amortization or serial bonds of the said county in the total amount of .... dollars ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the said board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the board may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, except the last bond which will be in the amount of .... dollars ($....); the sum of .... dollars ($....) of the said serial bonds will become payable on the .... day of ...., 19.., and a like amount on the same day each year thereafter until all of such bonds are paid, except that the last installment will be in the amount of .... dollars ($....).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding ....% per annum, payable semiannually, on the .... day of .... (month) and .... (month) in each year, and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds).

The bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board reserves the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars, ($....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that he shall fail or refuse to complete the purchase of the bonds in accordance with the terms of his bid.

All bids should be addressed to the board of county commissioners of said county and delivered to the county clerk of said county.

ATTEST:

....

(Chairman, Board of County Commissioners)
of ....County
State of Montana

....
(Clerk of the Board of County Commissioners) of
. County, Montana
Address ...., Montana

7-7-2251. *(Revived July 1, 1983)* **Form of notice of sale of bonds.** The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of .... County, state of Montana, that the board will on the .... day of ...., 19.., at the hour of ....m., at the office of the board in the courthouse in the (town or city) of .... in the said county, sell to the highest and best bidder for cash, either amortization or serial bonds of the said county in the total amount of .... dollars ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the said board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the board may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, except the last bond which will be in the amount of .... dollars ($....); the sum of .... dollars ($....) of the said serial bonds will become payable on the .... day of ...., 19.., and a like amount on the same day each year thereafter until all of such bonds are paid, except that the last installment will be in the amount of .... dollars ($....).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding 6% per annum, payable semiannually, on the .... day of .... (month) and .... (month) in each year, and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds).

The bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board reserves the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars, ($....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that he shall fail or refuse to complete the purchase of the bonds in accordance with the terms of his bid.

All bids should be addressed to the board of county commissioners of said county and delivered to the county clerk of said county.

ATTEST:

....
(Chairman, Board of County Commissioners)
of ....County
State of Montana

....
(Clerk of the Board of County Commissioners) of
. County, Montana
Address ...., Montana

History: **En. Sec. 15, Ch. 188, L. 1931; re-en. Sec. 4630.15, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2029; amd. Sec. 1, Ch. 500, L. 1981.**

Compiler's Comments

1981 Amendment: Changed "6%" to "....%" in the sixth paragraph.

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

7-7-2252. Publication of notice of sale. The board of county commissioners shall cause such notice to be published in the official newspaper of the county once each week for 4 successive weeks immediately preceding the date of sale. The board may in its discretion cause such notice to be published in some financial newspaper published in the city of New York or in the city of Chicago or in financial newspapers published in each of said cities.

History: **En. Sec. 16, Ch. 188, L. 1931; re-en. Sec. 4630.16, R.C.M. 1935; R.C.M. 1947, 16-2030.**

7-7-2253. Notice of sale and other information to be supplied to board of investments. At the same time the notice is sent to the official newspaper of the county for publication, the county clerk shall send a copy of the notice to the board of investments and shall furnish to the board of investments a transcript of the proceedings had for the issuance of bonds and any other information relating thereto as the board of investments may find necessary.

History: **En. Sec. 17, Ch. 188, L. 1931; re-en. Sec. 4630.17, R.C.M. 1935; amd. Sec. 3, Ch. 326, L. 1974; R.C.M. 1947, 16-2031.**

7-7-2254. Procedure for sale of bonds. (1) The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have preference over a bid for serial bonds, all other things being equal. In determining the kind of bonds to be issued, the board shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the county. The board shall accept the bid which they shall judge most advantageous to the county. The board is authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the county; provided, however, that such bonds shall not be sold at less than par and accrued interest to date of delivery.

(3) No attorneys' fees or brokerage or other fees or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale thereof.

History: **En. Sec. 18, Ch. 188, L. 1931; re-en. Sec. 4630.18, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1971; R.C.M. 1947, 16-2032.**

7-7-2255. Form and execution of bonds. (1) At the time of the sale of the bonds or at a meeting held thereafter, the board of county commissioners shall prescribe the form of the bonds, whether amortization bonds or serial bonds, and of the coupons to be attached thereto.

(2) Each and every county bond and every coupon attached thereto must be signed by the chairman of the board of county commissioners and the county treasurer and attested by the county clerk. Each bond shall have the county seal affixed thereto.

History: En. Sec. 19, Ch. 188, L. 1931; re-en. Sec. 4630.19, R.C.M. 1935; amd. Sec. 8, Ch. 260, L. 1959; R.C.M. 1947, 16-2033.

7-7-2256. Printing of bonds. (1) Except as provided in subsection (2), the county clerk, under the direction of the board, shall cause the bonds, with coupons attached thereto, to be printed or lithographed at the expense of the county at lowest commercial rates.

(2) A purchaser of such bonds may furnish the same to the county for execution if the same is done at his own expense and without expense to the county.

History: En. Sec. 20, Ch. 188, L. 1931; re-en. Sec. 4630.20, R.C.M. 1935; R.C.M. 1947, 16-2034.

7-7-2257. Registration of bonds. (1) When duly executed by the officers of the county as herein provided, the bonds shall be registered by the county treasurer in a book provided for that purpose before being delivered to the purchaser.

(2) Such registration shall show:

(a) the number and amount of each bond;

(b) the date of issue, date redeemable, and date when the same becomes due;

(c) the amount of all payments of both principal and interest required to be made on each bond with the dates when the same are required to be paid; and

(d) the name and address of the purchaser.

History: En. Sec. 21, Ch. 188, L. 1931; re-en. Sec. 4630.21, R.C.M. 1935; R.C.M. 1947, 16-2035(part).

7-7-2258. Copy of bond to be kept by county treasurer. The county clerk shall also deliver to the county treasurer an unsigned and canceled printed copy of a bond of each issue, as so issued and registered, to be preserved in his office.

History: En. Sec. 21, Ch. 188, L. 1931; re-en. Sec. 4630.21, R.C.M. 1935; R.C.M. 1947, 16-2035(part).

7-7-2259. Delivery of bonds. (1) If the board of investments is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the department of administration. The department shall deliver them to the state treasurer, and payment therefor shall be made in the manner provided by law.

(2) If the bonds are purchased by other investors, the county treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor.

History: En. Sec. 22, Ch. 188, L. 1931; re-en. Sec. 4630.22, R.C.M. 1935; amd. Sec. 4, Ch. 326, L. 1974; R.C.M. 1947, 16-2036(part).

7-7-2260. Disposition of sale proceeds. All money arising from the sale of the bonds shall be paid to the county treasurer and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.

History: En. Sec. 22, Ch. 188, L. 1931; re-en. Sec. 4630.22, R.C.M. 1935; amd. Sec. 4, Ch. 326, L. 1974; R.C.M. 1947, 16-2036(part).

7-7-2261. Maintenance of accounts for bond issues. (1) The county treasurer of each county shall keep in his books a special and separate sinking fund account for each series or issue of outstanding bonds issued by his county. Each such fund must at all times show the exact condition thereof.

(2) All taxes collected for interest and principal on county bonds shall be placed to the credit of the sinking fund for which the taxes were levied.

(3) Interest from investment of money in a sinking fund account may, in the discretion of the board of county commissioners, be used as it accrues to fulfill or complete the specific project for which the bonds were issued.

(4) The sinking fund shall be administered as provided in 7-7-123, 7-7-124, and 7-7-2270.

History: En. Sec. 27, Ch. 188, L. 1931; re-en. Sec. 4630.27, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1973; R.C.M. 1947, 16-2041(part); amd. Sec. 3, Ch. 256, L. 1979.

7-7-2262. Payment of principal and interest. The county treasurer shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as such interest and principal become due and at the place where said bonds are payable, upon the presentation and surrender of the coupon or coupons or bond or bonds to be paid. If the bonds are held by the state of Montana, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons or bonds and return the same to the county treasurer, together with his receipt.

History: En. Sec. 28, Ch. 188, L. 1931; re-en. Sec. 4630.28, R.C.M. 1935; R.C.M. 1947, 16-2042(part).

7-7-2263. Interest on late payments of principal and interest on bonds held by state. Any and all installments of interest or principal on bonds held by the state and not promptly paid at the office of the state treasurer when due shall draw interest at the rate of 6% per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 28, Ch. 188, L. 1931; re-en. Sec. 4630.28, R.C.M. 1935; R.C.M. 1947, 16-2042(part).

7-7-2264. Statement as to amount of principal and interest due and payable on bonds. (1) Whenever any county has any issue or series of bonds outstanding and there are not sufficient funds on hand available for the payment of the full amount of the interest and principal thereof, the county treasurer of such county shall, between the first and fifth days of August in each year while such bonds or any thereof remain outstanding and unpaid, make out and deliver to the board of county commissioners of such county a statement.

(2) The statement required by subsection (1) shall show the amount required to be raised by tax levy during the then-current fiscal year for payment of interest and principal becoming due and payable during such fiscal year or within 90 days thereafter on each issue or series of bonds outstanding. If no part of the principal of any such issue or series of bonds will become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time and to place the proper amount in the sinking fund for the payment of the principal of such bonds when they become due, as provided in 7-7-2265.

History: **En. Sec. 24, Ch. 188, L. 1931; re-en. Sec. 4630.24, R.C.M. 1935; R.C.M. 1947, 16-2038.**

7-7-2265. Tax levy for payment of bonds. (1) The board of county commissioners, at the time of making the levy of taxes for county purposes, must levy a separate and special tax upon all taxable property in the county for the payment of interest on and principal of each series or issue of bonds outstanding. The tax levy for any one series or issue of bonds must be entirely separate and distinct from such levy for any other series or issue of bonds.

(2) The levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of such bonds as will become due and payable during the then-current fiscal year or within 90 days thereafter, as such amount is shown by the treasurer's statement provided by 7-7-2264. If no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will become due and payable during the current fiscal year or within 90 days thereafter and to also place in the sinking fund for such issue or series of bonds, for the payment of the principal thereof when the same becomes due, an amount not less than a sum produced by dividing the whole amount for which such series or issue of bonds were originally issued by the number of years for which the same were originally issued to run.

History: **En. Sec. 25, Ch. 188, L. 1931; re-en. Sec. 4630.25, R.C.M. 1935; R.C.M. 1947, 16-2039.**

7-7-2266. Procedure in case of insufficient tax levy — individual liability of county commissioners. (1) If the board of county commissioners of any county shall fail, neglect, or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds as required by the provisions of 7-7-2265, the holder of any bond of such issue or series or any taxpayer paying taxes on property situated in such county may apply to the district court of the county issuing such bonds for a writ of mandate to compel the board of such county to make a proper and sufficient levy for such purposes.

(2) If, upon the hearing of such application, it shall appear to the satisfaction of the court that the board has failed, neglected, or refused to make any levy whatever for such purposes or has made a levy but that the same is insufficient to raise the amount required to be raised for such purposes under the provisions of 7-7-2265, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring such

board, at the next meeting thereof for the purpose of making and fixing county levies, to raise the amount of such deficiency. This levy shall be in addition to the levy required to be made for the then-current fiscal year.

(3) Any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board and shall not be a charge against such county.

History: En. Sec. 26, Ch. 188, L. 1931; re-en. Sec. 4630.26, R.C.M. 1935; R.C.M. 1947, 16-2040.

7-7-2267. Redemption of bonds held by state. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more of the outstanding bonds, or coupons in the case of amortization bonds, of the issue or series to which such sinking and interest fund belongs and whenever such bonds are held by the state of Montana, the county treasurer must apply such available money in payment of as many of such bonds, or coupons in the case of amortization bonds, as the same will pay.

(2) Not less than 15 days before the next interest payment date, the county treasurer must give notice to the board of investments that on such interest payment date, such bond or bonds or coupon or coupons will be paid. The county treasurer, before such interest payment date, must remit to the state treasurer the amount required to pay such bond or bonds, with the interest thereon, or amortization bond coupon or coupons.

(3) Upon receipt of such amount, the state treasurer must cancel such bond or bonds and all unpaid interest coupons attached thereto and the coupons paid, in the case of amortization bonds, and return the same, with his receipt, to the county treasurer.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part).

7-7-2268. Repemption of bonds held by one other than state. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding optional bonds, or coupons in the case of amortization bonds, of the issue or series to which such sinking and interest fund belongs, which bonds or coupons are not yet due but are then redeemable or will become redeemable on the next interest payment date, and whenever such bonds or coupons are not held by the state of Montana, the county treasurer must apply such available money in payment and redemption of as many of such bonds, or coupons in the case of amortization bonds, as the same will pay and redeem.

(2) The county treasurer must give notice to the holder of such bonds or coupons, if known to him, or to any bank or financial institution at which such bonds or coupons are payable, at least 15 days before the next interest payment date, that such bonds and coupons will be paid and redeemed on such date. The county treasurer must also publish in the official newspaper of the county, once a week for 2 consecutive weeks immediately preceding such interest payment date, a notice that such bonds or coupons have been called in for redemption and will be paid in full on such interest payment date.

(3) If such bonds or coupons are payable at some bank or financial institution, the county treasurer must remit to such bank or financial institution, before such interest payment date, an amount sufficient to pay and redeem such bonds or coupons. If such bonds are not presented for payment and redemption on such interest payment date, interest thereon shall cease on such date.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part).

7-7-2269. Order of redemption of bonds. All bonds or amortization bond coupons paid and redeemed under the provisions of 7-7-2267 or 7-7-2268 must be paid and redeemed in the numerical order in which the same were issued or become due.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part).

7-7-2270. Authority to purchase outstanding bonds. Whenever there is available money in any sinking fund over and above the amount required for payment of the principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds of the issue or series to which the sinking fund belongs and whenever such bonds are not held by the state of Montana and are not subject to redemption, the county treasurer, at the direction of the board of county commissioners, shall purchase such bonds if this can be done at not more than par and accrued interest or at such reasonable premium as the board may feel justified in paying, not in any case exceeding 5%.

History: En. Sec. 30, Ch. 188, L. 1931; re-en. Sec. 4630.30, R.C.M. 1935; amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1, Ch. 12, L. 1963; R.C.M. 1947, 16-2044(part); amd. Sec. 4, Ch. 256, L. 1979.

7-7-2271. Repealed. Sec. 7, Ch. 256, L. 1979.

History: En. Sec. 30, Ch. 188, L. 1931; re-en. Sec. 4630.30, R.C.M. 1935; amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1, Ch. 12, L. 1963; R.C.M. 1947, 16-2044(part).

7-7-2272. Cancellation of bonds and coupons. (1) (a) All bonds and interest coupons paid by the county treasurer from time to time shall be canceled by him, and after such cancellation, he shall deliver the same to the county clerk, with a report showing the numbers of such bonds and the amounts paid as principal and interest thereon. The county treasurer shall enter on the record of the registration of such bonds the date of the payment of the same and the several coupons attached thereto.

(b) The county clerk shall exhibit such bonds and coupons, with such report, to the board of county commissioners at the next regular meeting thereof.

(2) (a) When any bonds have been or are purchased with any sinking and interest fund money under the provisions of 7-7-2270, such bonds, with attached interest coupons, if not then in the possession of the county treasurer, shall be immediately delivered to him. Such county treasurer shall at once endorse across the face of each such bond the word "Paid" and the date thereof and shall sign such endorsement; and such treasurer shall, without detaching the same, cancel each interest coupon attached to such bonds by endorsing across the face thereof the word "Canceled" and the date thereof

and shall sign such endorsement. After making such endorsements on such bonds and coupons, the county treasurer shall enter on the record of registration thereof the date such bonds and coupons were so endorsed by him as being paid and canceled, with the numbers and amounts thereof and the dates when the same would have become due and payable if they had not been so purchased. The county treasurer shall then deliver such bonds, with the canceled coupons attached, to the county clerk, with a report showing the numbers thereof and amount paid on the purchase thereof.

(b) The county clerk shall exhibit such bonds, with attached coupons and report, to the board at its next regular session.

History: (1)En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; Sec. 16-2045, R.C.M. 1947; (2)En. Sec. 30, Ch. 188, L. 1931; re-en. Sec. 4630.30, R.C.M. 1935; amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1, Ch. 12, L. 1963; Sec. 16-2044, R.C.M. 1947; R.C.M. 1947, 16-2044(part), 16-2045(part).

7-7-2273. Cancellation of warrants and refunded general obligation bonds. (1) Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, the county treasurer shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the county clerk, with a report showing the numbers thereof and the amounts paid for principal and interest.

(2) The county clerk shall exhibit such warrants and bonds, with such report, to the board of county commissioners at the next regular meeting thereof.

History: En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; R.C.M. 1947, 16-2045(part).

7-7-2274. Closing of accounts and transfer of money to other accounts. When all bonds of any series or issue, with the interest thereon, have been fully paid or called in for payment and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest or not used as provided in 7-7-2261, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the county or to the sinking and interest fund of any other series or issue of bonds outstanding that the board of county commissioners may designate.

History: En. Sec. 27, Ch. 188, L. 1931; re-en. Sec. 4630.27, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1973; R.C.M. 1947, 16-2041(part).

7-7-2275. Refunding of bond issue held by state by exchange for amortization bonds. (1) Subject to the approval of the board of investments, the board of county commissioners of any county is hereby vested with the power and authority to issue amortization bonds for the purpose of refunding any outstanding bonds of such county held by the state of Montana and which were not issued either as amortization or serial bonds, whether such bonds are due or not, and to exchange the same for such outstanding bonds.

(2) Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in 7-7-2210 and shall bear interest at such rate as may be agreed upon between the board of county commissioners and the board of investments. Such amortization bonds may be issued and

exchanged for such outstanding bonds without submitting the question of issuing the same to an election, and it shall not be necessary to publish any notice of sale of such bonds.

(3) This section shall not be construed so as to deprive boards of county commissioners of the right to advertise, sell, and issue refunding bonds in the manner provided by part 23.

History: **En. Sec. 32, Ch. 188, L. 1931; re-en. Sec. 4630.32, R.C.M. 1935; amd. Sec. 24, Ch. 234, L. 1971; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2046.**

Part 23

County Refunding General Obligation Bonds

7-7-2301. Authority to issue refunding general obligation bonds. (1) The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part and part 22, for the purpose of refunding, paying, and redeeming optional, redeemable, or maturing bonds when:

(a) there are not sufficient funds available to pay such bonds; and

(b) it is deemed in the best interests of the county to refund such bonds.

(2) (a) The board shall have the power and authority to negotiate with the holders of the bonds of said county for an agreement or agreements whereby said bondholders agree to accept less than the full amount of such bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof, to enter into such agreement or agreements, and to issue refunding bonds for the amount agreed upon whenever:

(i) the total indebtedness of a county exceeds 5% of the value of the taxable property therein; and

(ii) the board of county commissioners of said county finds and determines that the county is unable to pay and discharge such indebtedness in full.

(b) These bonds may be issued in more than one series if the circumstances so require, and each series may be either amortization bonds or serial bonds. The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of such bonds.

History: **En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part).**

7-7-2302. Applicability of certain other bond provisions. The provisions of 7-7-2203 through 7-7-2211, 7-7-2222, and 7-7-2251 through 7-7-2274 apply to refunding bonds issued under this part.

History: **En. by Code Commissioner, 1979.**

7-7-2303. Term of refunding general obligation bonds. (1) (a) The following limitations as to term shall apply to all bonds issued under 7-7-2301(1). Except as provided in subsection (1)(b), no bonds shall be issued for a longer term than 10 years.

(b) (i) If the unexpired term of the bonds to be refunded shall be more than 10 years, the refunding bonds may be issued for such unexpired term.

(ii) If such 10-year term will require an annual tax levy for payment of such refunding bonds exceeding 10 mills on all property subject to taxation in the county, the term may be so extended as to reduce the required annual levy to 10 mills; provided, however, that the term shall not under any circumstances exceed 20 years.

(2) Bonds issued for any of the purposes designated in 7-7-2301(2) shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of 10 mills on all the property within the county subject to taxation, and the term shall not exceed 20 years.

(3) The length of the term required shall be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).

7-7-2304. Interest rate on refunding general obligation bonds. No refunding bonds shall be issued unless such refunding bonds shall bear interest at a rate of at least ½ of 1% less than the outstanding bonds which are to be refunded.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2305 through 7-7-2310 reserved.

7-7-2311. Issuance of refunding general obligation bonds without election. Bonds may be issued without submitting the same to an election if the bonds are issued for the purpose of:

(1) refunding, paying, and redeeming optional, redeemable, or maturing bonds as set forth in 7-7-2301(1); and

(2) refunding any bonds for which the holders have agreed to accept less than the full amount of principal and interest in full payment and satisfaction as set forth in 7-7-2301(2).

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2312. Disposition of proceeds of refunding bonds. Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, it shall be the duty of the county treasurer to apply the proceeds derived from the sale of such bonds to the payment of such warrants or bonds to be so funded or refunded.

History: En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; R.C.M. 1947, 16-2045(part).

Part 24

County Loans

7-7-2401. Authorization to borrow money. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to borrow money upon the credit of the county to meet current expenses if the county revenue is insufficient.

History: **En. Subd. 26, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.25, R.C.M. 1935; R.C.M. 1947, 16-1028.**

7-7-2402. Election required to borrow money — exceptions. (1) Except as provided in subsection (3), the board of county commissioners must not borrow money for any of the purposes mentioned in this title or for any single purpose to an amount exceeding $10,000 without:

(a) first having submitted the question of a loan to a vote of the electors of the county; and

(b) the approval of a majority of the electors of the county.

(2) If a majority of the votes cast are in favor of the loan, then the board may make the loan, issuing bonds or otherwise as may seem best for the interests of the county.

(3) It shall not be necessary to submit to the electors the question of borrowing money:

(a) to refund outstanding bonds; or

(b) for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines.

History: **(1), (3)En. Sec. 4270, Pol. C. 1895; re-en. Sec. 2933, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1919; re-en. Sec. 4717, R.C.M. 1921; re-en. Sec. 4717, R.C.M. 1935; Sec. 16-2301, R.C.M. 1947; (2)En. Sec. 4274, Pol. C. 1895; re-en. Sec. 2937, Rev. C. 1907; re-en. Sec. 4721, R.C.M. 1921; re-en. Sec. 4721, R.C.M. 1935; Sec. 16-2305, R.C.M. 1947; R.C.M. 1947, 16-2301, 16-2305.**

7-7-2403. Determination of amount of loan. Whenever it is necessary to submit to a vote of the electors of the county the question of making a loan, the board must first determine the amount necessary to be raised.

History: **En. Sec. 4271, Pol. C. 1895; re-en. Sec. 2934, Rev. C. 1907; re-en. Sec. 4718, R.C.M. 1921; re-en. Sec. 4718, R.C.M. 1935; R.C.M. 1947, 16-2302.**

7-7-2404. Notice of election. Notice of the election, clearly stating the amount to be raised and the object of the loan, must be given in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

History: **En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907; re-en. Sec. 4719, R.C.M. 1921; re-en. Sec. 4719, R.C.M. 1935; R.C.M. 1947, 16-2303(part).**

7-7-2405. Form of ballots. There must be written or printed on the ballots the words "For the loan" and "Against the loan", and in voting the elector must vote for the proposition he prefers by making an X opposite the proposition.

History: **En. Sec. 4273, Pol. C. 1895; re-en. Sec. 2936, Rev. C. 1907; re-en. Sec. 4720, R.C.M. 1921; re-en. Sec. 4720, R.C.M. 1935; R.C.M. 1947, 16-2304.**

7-7-2406. Conduct of election and canvass of results. The election must be held and conducted and the returns must be made in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

History: En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907; re-en. Sec. 4719, R.C.M. 1921; re-en. Sec. 4719, R.C.M. 1935; R.C.M. 1947, 16-2303(part).

7-7-2407. Restriction on use of loan proceeds. All money borrowed by or on behalf of any county must be used only for the purpose specified in the law authorizing the loan.

History: En. Sec. 4195, Pol. C. 1895; re-en. Sec. 2875, Rev. C. 1907; re-en. Sec. 4446, R.C.M. 1921; Cal. Pol. C. Sec. 4005; re-en. Sec. 4446, R.C.M. 1935; R.C.M. 1947, 16-806.

Parts 25 through 40 reserved

Part 41

General Provisions Related to Municipalities

7-7-4101. Purposes for which indebtedness may be incurred. The city or town council has power to contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes:

(1) erection of public buildings;

(2) construction of sewers, sewage treatment and disposal plants, waterworks, reservoirs, reservoir sites, and lighting plants;

(3) supplying the city or town with water by contract and the construction or purchase of canals or ditches and water rights for supplying the city or town with water;

(4) construction of bridges, docks, wharves, breakwaters, piers, jetties, and moles;

(5) to acquire, open, and/or widen any street and to improve the same by constructing, reconstructing, and repairing pavement, gutters, curbs, and vehicle parking strips and to pay all or any portion of the cost thereof;

(6) the purchase of fire apparatus and street and other equipment;

(7) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water; and

(8) the funding of outstanding warrants and maturing bonds.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-7-4102. Investment of certain bond proceeds. (1) Whenever the city or town has under its control any money realized from the sale of bonds, for which there is no immediate demand and which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes, or United States treasury bonds having a maturity date of 1 year or less, the city or town council is authorized in their discretion to direct the city treasurer or town clerk to make such investments.

(2) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969; R.C.M. 1947, 11-1310(2).

7-7-4103. General qualifications to vote on questions of municipal indebtedness. (1) Registered electors of the city, town, or other municipal corporation may vote upon any proposal to create or increase any indebtedness of the city, town, or other municipal corporation required by law to be submitted to a vote of the electors.

(2) No elector, otherwise qualified, may be denied the right to vote because the polling place for a general election for the precinct wherein he resides and is entitled to vote lies within another city, town, or other municipal corporation.

History: En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; re-en. Sec. 5199.1, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1959; R.C.M. 1947, 84-4711(part); amd. Sec. 2, Ch. 212, L. 1979.

7-7-4104 through 7-7-4110 reserved.

7-7-4111. Procedure to declare municipal bankruptcy. (1) Any city or town may submit itself and a proposed plan of composition to the jurisdiction of the bankruptcy court having jurisdiction of such matter and be governed by the proceedings, orders, and decrees of the court as provided by the federal municipal bankruptcy laws.

(2) The city or town may compose and enter into, submit itself to, and perform the plan of composition as required by the federal laws and the orders and decrees of the bankruptcy court:

(a) upon the adoption by its city council or town council of an ordinance or resolution:

(i) declaring that it is insolvent or unable to meet its debts as they mature;

(ii) declaring that it desires to effect a plan for the composition of its debts under the provisions of the federal municipal bankruptcy laws; and

(iii) providing that the city or town shall proceed to the composition of its municipal indebtedness under the provisions of the federal laws; and

(b) upon the acceptance in writing of the proposed plan of composition of municipal indebtedness by creditors of the petitioning municipal corporation owning not less than the percentage thereof in amount of the municipal securities affected or to be affected by the proposed plan of composition, as provided in the federal laws.

History: En. Sec. 1, Ch. 114, L. 1939; R.C.M. 1947, 11-1303; amd. Sec. 3, Ch. 212, L. 1979.

7-7-4112. Power to comply with court decrees related to bankruptcy. Any city or town may comply with all orders and decrees contemplated by the federal municipal bankruptcy laws and may issue its bonds and other securities for the carrying out and consummation of the composition of its debts as provided and contemplated by the federal law and as required by the orders and decrees of the bankruptcy court.

History: En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part); amd. Sec. 4, Ch. 212, L. 1979.

7-7-4113. Role of state and state agencies in relation to bankruptcy. The state or any department or agency thereof holding any of the securities of any such city or town shall have the power to consent to any plan of composition of the indebtedness of any such city or town by the board having custody of and control over any such securities or by any other official or officials having such custody and control.

History: En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part).

Part 42

Municipal General Obligation Bonds

7-7-4201. Limitation on amount of bonded indebtedness. (1) Except as otherwise provided, no city or town may issue bonds or incur other indebtedness for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed 28% of the taxable value of the property therein subject to taxation, to be ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

History: En. Sec. 3, Ch. 160, L. 1931; re-en. Sec. 5278.3, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955; amd. Sec. 1, Ch. 33, L. 1973; amd. Sec. 30, Ch. 566, L. 1977; R.C.M. 1947, 11-2303; amd. Sec. 2, Ch. 617, L. 1979; amd. Sec. 47, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Increased 18% to 28% in (1).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-7-4202. Special provisions relating to water and sewer systems. (1) Notwithstanding the provisions of 7-7-4201, for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town which owns and controls the water supply and water system and devotes the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted which is unpaid or outstanding, may not in the aggregate exceed 55% over and above the 28%, referred to in

7-7-4201, of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes.

History: Ap. p. Sec. 3, Ch. 160, L. 1931; re-en. Sec. 5278.3, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955; amd. Sec. 1, Ch. 33, L. 1973; amd. Sec. 30, Ch. 566, L. 1977; Sec. 11-2303, R.C.M. 1947; Ap. p. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; Sec. 11-966, R.C.M. 1947; R.C.M. 1947, 11-966(part), 11-2303(part); amd. Sec. 3, Ch. 617, L. 1979; amd. Sec. 48, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Increased 36% to 55% and 18% to 28% in (2).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-7-4203. What constitutes a single purpose. The following shall be deemed a single purpose:

(1) acquiring land for a site for a public building or for any other public use and constructing, erecting, or acquiring by purchase any building thereon and furnishing and equipping the same;

(2) acquiring of rights-of-way for street or other purposes, making improvements thereon, or constructing sewers or water pipelines;

(3) procuring of a water supply and constructing or acquiring of a water system and improving the same if necessary.

History: En. Sec. 2, Ch. 160, L. 1931; re-en. Sec. 5278.2, R.C.M. 1935; R.C.M. 1947, 11-2302.

7-7-4204. Nature of general obligation bonds. All bonds issued under the provisions of this part shall be legal and valid obligations of the city or town issuing the same, and the full faith and credit of such city or town are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same become due.

History: En. Sec. 20, Ch. 160, L. 1931; re-en. Sec. 5278.20, R.C.M. 1935; R.C.M. 1947, 11-2320.

7-7-4205. Term of general obligation bonds. No bonds for any purpose shall be issued for a longer term than 20 years.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

7-7-4206. Redemption of bonds. All bonds issued for a longer term than 5 years shall be redeemable at the option of the city or town on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so recited in the bonds.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

7-7-4207. *(Suspended)* **Bond interest rate.** The maximum rate of interest which any bonds may bear shall be 7% per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

Compiler's Comments

Suspension: Section 20, Ch. 500, L. 1981, provided: "The operation of sections 7-7-2208 and 7-7-4207, MCA, is suspended until July 1, 1983."

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

7-7-4208. Types of general obligation bonds. All bonds issued by any city or town shall be either amortization bonds or serial bonds. All things being equal, amortization bonds shall be issued in preference to serial bonds; otherwise, serial bonds may be issued.

History: En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part).

7-7-4209. Amortization bonds. The term "amortization bonds", as used in this part, is hereby defined as meaning that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on both principal and interest is the same on each interest payment date; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

History: En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part).

7-7-4210. Serial bonds. The term "serial bonds", as used in this part, is hereby defined as being a bond issue payable in equal annual installments, one installment consisting of one or more bonds, becoming due and payable each year (the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run), so that the total amount of principal to be paid each year the bonds are to run will be the same; provided, however, that the payments becoming due the first year or the first and second years may vary in amount from the other payments to the extent resulting from fixing the amount of each bond of the other payments at $100, $500, or some multiple thereof.

History: En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part).

7-7-4211 through 7-7-4220 reserved.

7-7-4221. Election on question of incurring indebtedness — exception. (1) Except as provided in subsection (2), whenever the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality for any purpose authorized by law, the question of issuing the bonds shall first be submitted to the registered electors of the city or town.

(2) It is not necessary to submit to the electors the question of issuing refunding bonds to refund bonds issued and outstanding or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; R.C.M. 1947, 11-2301; amd. Sec. 5, Ch. 212, L. 1979; amd. Sec. 315, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-7-4222. Election required for bond issue relating to water and sewer systems. No money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewer system until the proposition has been submitted to a vote and the majority vote cast in favor thereof.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-7-4223. Procedure to call election on question of bonded indebtedness. An election on the question of issuing bonds may be called by the city or town council or commission on its passage of the necessary resolution, as hereinafter provided, or after there has been presented to the council or commission a petition asking that such election be held and question submitted.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part).

7-7-4224. Petition to request election. (1) A petition asking that an election be held on the question of issuing bonds shall be signed by not less than 20% of the qualified electors of the city or town. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

(2) Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds to be issued therefor, is separately stated in such petition.

(3) Such petition may consist of one sheet or of several sheets, identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the city or town clerk as hereinafter provided.

(4) Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated or assisted in circulating

such petition that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part).

7-7-4225. Presentation of petition to city or town clerk — clerk's certificate. (1) The completed petition shall be filed with the city or town clerk. The clerk shall, within 15 days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners and attach thereto a certificate, under his official signature.

(2) The certificate shall set forth:

(a) the total number of persons who are registered electors;

(b) which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition;

(c) whether such qualified signers constitute more or less than 20% of the registered electors of the city or town.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part).

7-7-4226. Resolution to submit question of issuing bonds to voters. (1) When the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality pursuant to any statute of this state, the governing body shall pass and adopt a resolution.

(2) The resolution shall:

(a) recite the purpose or purposes for which it is proposed to issue the bonds;

(b) fix the amount of bonds to be issued for each purpose;

(c) determine the number of years through which the bonds are to be paid, not exceeding the limits fixed in 7-7-4205; and

(d) unless the bonds are revenue bonds not pledging the general credit of the municipality, make such provisions as are necessary for submitting the question to the registered electors of the city or town at the next general city or town election or at a special election which the governing body may call for the purpose.

(3) Whenever the bond issuance is proposed by petition, the governing body shall, before submitting the measure to the electors, pass a resolution containing the information herein required and, in addition thereto, setting forth the essential facts in regard to the filing and presentation of the petition.

History: En. 11-2307.1 by Sec. 3, Ch. 413, L. 1973; R.C.M. 1947, 11-2307.1; amd. Sec. 6, Ch. 212, L. 1979; amd. Sec. 316, Ch. 571, L. 1979.

7-7-4227. Notice of election. (1) Whether such election is held at the general city or town election or at a special election, separate notice shall be given thereof.

(2) (a) The notice shall state:

(i) the date when the election will be held;

(ii) the hours between which the polls will be open;

(iii) the amount of bonds proposed to be issued;

(iv) the purpose thereof;

(v) the term of years through which the bonds will be paid; and

(vi) such other information regarding the election and the proposed bonds as the board may consider proper.

(b) If the bonds proposed to be issued are for two or more purposes, each purpose and the amount thereof must be separately stated.

(3) The notice shall be:

(a) posted in each voting precinct in the city or town at least 10 days prior to the date for holding the election; and

(b) published as provided in 13-1-108.

History: En. Sec. 8, Ch. 160, L. 1931; re-en. Sec. 5278.8, R.C.M. 1935; R.C.M. 1947, 11-2308(part); amd. Sec. 317, Ch. 571, L. 1979.

7-7-4228 through 7-7-4234. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-7-4228. En. Sec. 8, Ch. 160, L. 1931; re-en. Sec. 5278.8, R.C.M. 1935; R.C.M. 1947, 11-2308(part).

7-7-4229. En. Sec. 8, Ch. 160, L. 1931; re-en. Sec. 5278.8, R.C.M. 1935; R.C.M. 1947, 11-2308(part).

7-7-4230. En. Sec. 9, Ch. 160, L. 1931; re-en. Sec. 5278.9, R.C.M. 1935; R.C.M. 1947, 11-2309(part).

7-7-4231. En. Sec. 10, Ch. 160, L. 1931; re-en. Sec. 5278.10, R.C.M. 1935; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959; amd. Sec. 10, Ch. 158, L. 1971; R.C.M. 1947, 11-2310(part).

7-7-4232. En. Sec. 10, Ch. 160, L. 1931; re-en. Sec. 5278.10, R.C.M. 1935; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959; amd. Sec. 10, Ch. 158, L. 1071; R.C.M. 1947, 11-2310(part).

7-7-4233. En. Sec. 9, Ch. 160, L. 1931; re-en. Sec. 5278.9, R.C.M. 1935; R.C.M. 1947, 11-2309(part).

7-7-4234. En. Sec. 12, Ch. 160, L. 1931; re-en. Sec. 5278.12, R.C.M. 1935; R.C.M. 1947, 11-2312(part).

7-7-4235. Percentage of electors required to authorize the issuing of bonds. (1) Wherever the question of issuing bonds for any purpose is submitted to the registered electors of a city or town at either a general or special election, not less than 40% of the registered electors entitled to vote on the proposition or question must vote thereon; otherwise, the proposition shall be considered to have been rejected.

(2) If 40% or more of the registered electors do vote on the proposition or question at the election and a majority of the votes are cast in favor of the question or proposition, then the proposition or question shall be considered to have been adopted and approved.

History: En. Sec. 11, Ch. 160, L. 1931; re-en. Sec. 5278.11, R.C.M. 1935; R.C.M. 1947, 11-2311; amd. Sec. 318, Ch. 571, L. 1979.

7-7-4236. Resolution to issue bonds. (1) If 40% or more of the qualified electors of the city or town entitled to vote on the question of issuing bonds voted thereon and a majority of the votes were cast in favor of the issuing of the bonds, the city or town council shall, at a regular or special meeting held within 30 days thereafter, pass a resolution providing for the issuance of the bonds.

(2) The resolution shall recite:

(a) the purpose for which the bonds are to be issued;

(b) the amount thereof;

(c) the maximum rate of interest the bonds may bear;

(d) the date they shall bear;

(e) the period of time through which they are payable; and

(f) that any bond may be redeemed in full, at the option of the city or town, on any interest payment date after expiration of one-half of the term for which the bond was issued.

(3) The resolution shall provide for the manner of execution of the bonds. It shall provide that preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form. The council may in its discretion provide that such bonds may be issued and sold in two or more series or installments.

(4) The resolution shall adopt a form of notice of the sale of the bonds.

History: En. Sec. 12, Ch. 160, L. 1931; re-en. Sec. 5278.12, R.C.M. 1935; R.C.M. 1947, 11-2312(part); amd. Sec. 7, Ch. 212, L. 1979.

7-7-4237 through 7-7-4250 reserved.

7-7-4251. *(Temporary)* **Form of notice of sale of bonds.** The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of ...., Montana, that the council will, on the .... day of ...., 19.., at the hour of ... ...m., at its council chamber in the (city or town) of ...., Montana, sell to the highest and best bidder for cash either amortization or serial bonds of the said (city or town) in the total amount of .... dollars, ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the council.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds as the council may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, except the last bond which will be in the amount of .... dollars ($....); the sum of .... dollars ($....) of said serial bonds will become due and payable on the .... day of ...., 19.., and a like amount on the same day each year thereafter until all such bonds are paid, except that the last installment will be in the amount of .... dollars ($....).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., will bear interest at a rate not exceeding ....% per annum, payable semiannually, on the .... day of .... and on the .... day of .... in each year and will be redeemable (here insert the optional provisions, if any, recited in the bonds).

Said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The council reserves the right to reject any and all bids and to sell said bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of ....

dollars ($....), payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event he shall fail or refuse to complete the purchase of said bonds in accordance with the terms of his bid.

All bids shall be addressed to the council of the (city or town) of .... and delivered to the clerk of said (city or town).

....
Mayor of the (city or town) of
...., Montana

ATTEST:
....
(City or Town) Clerk

7-7-4251. *(Revived July 1, 1983)* **Form of notice of sale of bonds.** The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of ...., Montana, that the council will, on the .... day of ...., 19.., at the hour of ... ...m., at its council chamber in the (city or town) of ...., Montana, sell to the highest and best bidder for cash either amortization or serial bonds of the said (city or town) in the total amount of .... dollars, ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the council.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds as the council may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, except the last bond which will be in the amount of .... dollars ($....); the sum of .... dollars ($....) of said serial bonds will become due and payable on the .... day of ...., 19.., and a like amount on the same day each year thereafter until all such bonds are paid, except that the last installment will be in the amount of .... dollars ($....).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., will bear interest at a rate not exceeding 6% per annum, payable semiannually, on the .... day of .... and on the .... day of .... in each year and will be redeemable (here insert the optional provisions, if any, recited in the bonds).

Said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The council reserves the right to reject any and all bids and to sell said bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars ($....), payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event he shall fail or refuse to complete the purchase of said bonds in accordance with the terms of his bid.

All bids shall be addressed to the council of the (city or town) of .... and delivered to the clerk of said (city or town).

....
Mayor of the (city or town) of
...., Montana

ATTEST:

....
(City or Town) Clerk

History: **En. Sec. 13, Ch. 160, L. 1931; re-en. Sec. 5278.13, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2313; amd. Sec. 2, Ch. 500, L. 1981.**

Compiler's Comments

1981 Amendment: Changed "6%" to "....%" in the sixth paragraph.

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

7-7-4252. Publication of notice of sale. The city or town council or commission shall cause such notice to be published once in each calendar week in each of the 4 successive calendar weeks (four publications) immediately preceding the week which contains the date of sale in a newspaper of general circulation printed and published in said city or town if there be one and, if not, then in a newspaper of general circulation printed and published in the county in which said city or town is located. The council or commission may in its discretion cause such notice to be published in such other newspaper or newspapers published either within or without the state as in the opinion of the council or commission will be most likely to give notice of such sale to prospective bidders.

History: **En. Sec. 14, Ch. 160, L. 1931; re-en. Sec. 5278.14, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1955; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2314(part).**

7-7-4253. Notice of sale and other information to be supplied to board of investments. The city or town clerk must, at least 15 days before the date fixed for the sale of general obligation bonds only, send a copy of the published notice required by 7-7-4252 to the secretary of the board of investments and shall thereupon furnish to the secretary a transcript of the proceedings had for the issuance of general obligation bonds only and such other information relating thereto as the secretary may find necessary.

History: **En. Sec. 14, Ch. 160, L. 1931; re-en. Sec. 5278.14, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1955; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2314(part).**

7-7-4254. Procedure for sale of bonds. (1) The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have preference over a bid for serial bonds, all other things being equal. In determining the kind of bonds to be issued, the council shall take into consideration not only the rate

of interest demanded on each kind but also all other known elements affecting the interests of the city or town. The council shall accept the bid it considers most advantageous to the city or town. The council may reject any and all bids and sell the bonds at private sale if this is considered to be in the best interests of the city or town; provided, however, that the bonds may not be sold at less than par and accrued interest to date of delivery.

(3) No attorneys' fees or brokerage or other fees or commissions of any kind may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale thereof.

History: En. Sec. 15, Ch. 160, L. 1931; re-en. Sec. 5278.15, R.C.M. 1935; amd. Sec. 8, Ch. 234, L. 1971; R.C.M. 1947, 11-2315; amd. Sec. 8, Ch. 212, L. 1979.

7-7-4255. Form and execution of bonds. (1) At the time of the sale of the bonds or at a meeting held thereafter, the city or town council shall prescribe the form of the bonds, whether amortization or serial bonds, and of the coupons to be attached thereto.

(2) Each and every bond and every coupon attached thereto must be signed by the mayor of the city or town and by the treasurer thereof and must be attested by the city or town clerk. Each bond shall have the city or town seal affixed thereto.

History: En. Sec. 16, Ch. 160, L. 1931; re-en. Sec. 5278.16, R.C.M. 1935; amd. Sec. 6, Ch. 260, L. 1959; R.C.M. 1947, 11-2316.

7-7-4256. Printing of bonds. (1) Except as provided in subsection (2), the city or town clerk, under the direction of the council, shall cause the bonds, with coupons attached thereto, to be printed or lithographed at the expense of the city or town at lowest commercial rates.

(2) A purchaser of such bonds may furnish the same to the city or town, in the form prescribed by the council, for execution, if the same is done at his own expense and without cost or expense to the city or town.

History: En. Sec. 17, Ch. 160, L. 1931; re-en. Sec. 5278.17, R.C.M. 1935; R.C.M. 1947, 11-2317.

7-7-4257. Registration of bonds. (1) When duly executed by the officers of the city or town as herein provided, the bonds shall be registered by the city treasurer or town clerk in a book provided for that purpose before being delivered to the purchaser.

(2) Such registration shall show:

(a) the number and amount of each bond;

(b) the date of issue, date redeemable, and date when the same will become due;

(c) the amount of all payments of both principal and interest required to be made on each bond, with the dates when the same are required to be made; and

(d) the name and address of the purchaser.

History: En. Sec. 18, Ch. 160, L. 1931; re-en. Sec. 5278.18, R.C.M. 1935; R.C.M. 1947, 11-2318(part).

7-7-4258. Copy of bond to be kept by city treasurer or town clerk. The city or town clerk shall also deliver to the city treasurer or town clerk an unsigned and canceled printed copy of one of the bonds, as so issued and registered, to be preserved in his office.

History: En. Sec. 18, Ch. 160, L. 1931; re-en. Sec. 5278.18, R.C.M. 1935; R.C.M. 1947, 11-2318(part).

7-7-4259. Delivery of bonds. (1) If the board of investments is the purchaser of the bonds, the city treasurer or town clerk shall forward the registered bonds to the department of administration. The department shall deliver them to the state treasurer, and payment therefor shall be made in the manner provided by law.

(2) If the bonds are purchased by other investors, the city treasurer or town clerk shall deliver the bonds to the purchaser upon receiving full payment therefor.

History: En. Sec. 19, Ch. 160, L. 1931; re-en. Sec. 5278.19, R.C.M. 1935; amd. Sec. 2, Ch. 326, L. 1974; R.C.M. 1947, 11-2319(part).

7-7-4260. Disposition of sale proceeds. All money arising from the sale of the bonds shall be paid to the city treasurer or town clerk and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.

History: En. Sec. 19, Ch. 160, L. 1931; re-en. Sec. 5278.19, R.C.M. 1935; amd. Sec. 2, Ch. 326, L. 1974; R.C.M. 1947, 11-2319(part).

7-7-4261. Maintenance of accounts for bond issues. (1) The city treasurer or town clerk shall keep in his books a special and separate sinking fund account for each issue or series of outstanding bonds issued by his city or town. Each such fund must at all times show the exact condition thereof.

(2) All taxes collected for interest and principal on city or town bonds shall be placed to the credit of the sinking fund for which the taxes were levied.

(3) The sinking fund shall be administered as provided in 7-7-123, 7-7-124, and 7-7-4270.

History: En. Sec. 24, Ch. 160, L. 1931; re-en. Sec. 5278.24, R.C.M. 1935; R.C.M. 1947, 11-2324(part); amd. Sec. 5, Ch. 256, L. 1979.

7-7-4262. Payment of principal and interest. The city treasurer or town clerk shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as such interest and principal become due and at the place where such bonds are payable, upon presentation and surrender of the coupon or coupons or bond or bonds to be paid. If the bonds are held by the state, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons or bonds and return the same to the city treasurer or town clerk, together with his receipt therefor.

History: En. Sec. 25, Ch. 160, L. 1931; re-en. Sec. 5278.25, R.C.M. 1935; R.C.M. 1947, 11-2325(part).

7-7-4263. Interest on late payments of principal and interest. Any and all installments of interest or principal of bonds issued under the provisions of this part not promptly paid when due shall draw interest at the rate of 6% per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 25, Ch. 160, L. 1931; re-en. Sec. 5278.25, R.C.M. 1935; R.C.M. 1947, 11-2325(part).

7-7-4264. Statement as to amount of principal and interest due and payable on bonds. (1) Whenever any city or town has any issue or series of bonds outstanding and there are not sufficient funds on hand available for the payment of the full amount of the interest and principal thereof, the city treasurer or town clerk shall, between July 1 and July 15 in each year while such bonds or any of them remain outstanding and unpaid, make out and deliver to the city or town clerk a statement.

(2) The statement required by subsection (1) shall show the amount required to be raised by tax levy during the then-current fiscal year for payment of interest and principal becoming due and payable during such fiscal year or within 90 days thereafter on each issue or series of bonds outstanding. If no part of the principal of any such issue or series of bonds outstanding or if no part of the principal of any such issue or series of bonds will become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time and to place the proper amount in the sinking fund for the payment of the principal of such bonds when they become due, as provided in 7-7-4204.

(3) The statement prepared by the city treasurer or town clerk shall be presented by the city or town clerk to the city or town council at its next meeting.

History: **En. Sec. 21, Ch. 160, L. 1931; re-en. Sec. 5278.21, R.C.M. 1935; R.C.M. 1947, 11-2321.**

7-7-4265. Tax levy for payment of bonds. (1) The city or town council, at the time of making the levy of taxes for general city or town purposes, must levy a separate and special tax upon all taxable property in the city or town for the payment of interest and principal for each series or issue of bonds outstanding. The tax levy for any one series or issue of bonds must be entirely separate and distinct from the levy for any other issue or series of bonds.

(2) The levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of the bonds as will become due and payable during the then-current fiscal year or within 90 days thereafter, as such amount is shown by the treasurer's statement provided for by 7-7-4264. If no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will become due and payable during the current fiscal year or within 90 days thereafter and to also place in the sinking fund for such issue or series of bonds, for the payment of the principal when the same becomes due, an amount not less than a sum produced by dividing the whole amount for which the series or issue of bonds were originally issued by the number of years for which such series or issue of bonds were originally issued to run, as such amounts are shown by the treasurer's statement provided for by 7-7-4264.

History: **En. Sec. 22, Ch. 160, L. 1931; re-en. Sec. 5278.22, R.C.M. 1935; R.C.M. 1947, 11-2322; amd. Sec. 9, Ch. 212, L. 1979.**

7-7-4266. Procedure in case of insufficient tax levy — individual liability of council members. (1) If the council of any city or town shall fail, neglect, or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds as required by the provisions of 7-7-4265, the holder of any bond of such issue or series or any taxpayer paying taxes on property situated in such city or town may apply to the district court of the county in which the city or town issuing such bonds is situated for a writ of mandate to compel the city or town council to make a proper and sufficient levy for such purposes.

(2) If, upon the hearing of such application, it shall appear to the satisfaction of the court that the city or town council has failed, neglected, or refused to make any levy whatever for such purposes or has made a levy but that the same is insufficient to raise the amount required to be raised for such purposes under the provisions of 7-7-4265, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring such city or town council, at the next meeting thereof for the purpose of making and fixing city or town levies, to make and fix a tax levy against all taxable property in such city or town sufficient to raise the amount of such deficiency. This levy shall be in addition to the levy required to be made for the then-current fiscal year.

(3) Any costs which may be allowed or awarded the petition in any such proceeding shall be paid by the members of the city or town council and shall not be a charge against the city or town.

History: En. Sec. 23, Ch. 160, L. 1931; re-en. Sec. 5278.23, R.C.M. 1935; R.C.M. 1947, 11-2323.

7-7-4267. Redemption of bonds held by state. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more of the outstanding bonds of the issue or series to which such sinking and interest fund belongs and whenever such bonds are held by the state, the city treasurer or town clerk must apply such available money in payment of as many of such bonds as the same will pay.

(2) Not less than 15 days before the next interest payment date, the city treasurer or town clerk must give notice to the board of investments that on such interest payment date, such bond or bonds will be paid. The city treasurer or town clerk, before such interest payment date, must remit to the state treasurer the amount required to pay such bond or bonds, with the interest thereon.

(3) Upon receipt of such amount, the state treasurer must cancel such bond or bonds and all unpaid interest coupons attached thereto and return the same, with his receipt, to the city treasurer or town clerk.

History: En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part).

7-7-4268. Redemption of bonds held by one other than state. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more of the outstanding optional bonds of the issue or series to which such sinking and interest fund belongs, which bonds are not yet due but are then redeemable or will become redeemable on the next interest payment date, and whenever such bonds are not held by the state, the city treasurer or town clerk must apply such available money in payment and redemption of as many of such bonds as the same will pay and redeem.

(2) The city treasurer or town clerk must give notice to the holder of such bond or bonds, if known to him, or to any bank or financial institution at which such bonds are payable, at least 15 days before the next interest payment date, that such bonds will be redeemed and paid on such date. The city treasurer or town clerk must also publish in some newspaper of general circulation printed and published in the city or town and, if there be none, then in some newspaper of general circulation in such city or town printed and published in the county in which such city or town is situated a notice that such bond or bonds have been called in for redemption and will be paid in full on such interest payment date. The notice shall be published once a week for 2 successive weeks immediately preceding such interest payment date.

(3) If such bonds are payable at some bank or financial institution, the city treasurer or town clerk must remit to such bank or institution, before such interest payment date, an amount sufficient to pay and redeem such bonds. If such bonds are not presented for redemption and payment on such interest payment date, interest thereon shall cease on such date.

History: **En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part).**

7-7-4269. Order of redemption of bonds. All bonds paid and redeemed under the provisions of 7-7-4267 or 7-7-4268 must be paid and redeemed in the numerical order in which the same were issued.

History: **En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part).**

7-7-4270. Authority to buy outstanding bonds. Whenever there is available money in any sinking fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds of the issue or series to which the sinking fund belongs and whenever such bonds are not held by the state and are not subject to redemption, the city treasurer or town clerk, at the direction of the city or town council, shall purchase such bonds if this can be done at not more than par and accrued interest or at such reasonable premium as the council may feel justified in paying, not, in any case, exceeding 5%.

History: **En. Sec. 27, Ch. 160, L. 1931; re-en. Sec. 5278.27, R.C.M. 1935; R.C.M. 1947, 11-2327(part); amd. Sec. 6, Ch. 256, L. 1979.**

7-7-4271. Repealed. Sec. 7, Ch. 256, L. 1979.

History: **En. Sec. 27, Ch. 160, L. 1931; re-en. Sec. 5278.27, R.C.M. 1935; R.C.M. 1947, 11-2327(part).**

7-7-4272. Cancellation of bonds and coupons. (1) All bonds and interest coupons paid by the city treasurer or town clerk from time to time shall be canceled by him, and after such cancellation, he shall deliver the same to the city or town clerk, with a report showing the numbers of such bonds and the amounts paid as principal and interest thereon. The city treasurer or town clerk shall enter on the records of the registration of such bonds the date of the payment of the same and the several coupons attached thereto.

(2) The city or town clerk shall exhibit such bonds and coupons, with such report, to the city or town council at the next regular meeting thereof.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part).

7-7-4273. Cancellation of warrants and refunded general obligation bonds. (1) Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, the city treasurer or town clerk shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the city or town clerk, with a report showing the numbers thereof and the amounts paid for principal and interest.

(2) The city or town clerk shall exhibit such warrants or bonds, with such report, to the city or town council at the next regular meeting thereof.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part).

7-7-4274. Closing of accounts and transfer of money to other funds. When all bonds of any series or issue, with the interest thereon, have been fully paid or called in for payment and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the city or town or to the sinking and interest fund of any other issue or series of bonds outstanding that the city or town council may designate.

History: En. Sec. 24, Ch. 160, L. 1931; re-en. Sec. 5278.24, R.C.M. 1935; R.C.M. 1947, 11-2324(part).

7-7-4275. *(Temporary)* **Refunding of bond issue held by state by exchange for amortization bonds.** (1) Subject to the approval of the board of investments, the council of any city or town is hereby authorized to issue amortization bonds for the purpose of refunding any outstanding bonds of such city or town held by the state and which were not issued either as amortization or serial bonds and to exchange the same for such outstanding bonds.

(2) Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in 7-7-4209 and shall bear interest at such rate as may be agreed upon between the council of such city or town and the board of investments pursuant to 17-5-102. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same at an election, and it shall not be necessary to publish any notice of sale of such bonds.

(3) This section shall not be construed so as to deprive city or town councils of the right to advertise, sell, and issue refunding bonds in the manner provided in part 43.

7-7-4275. *(Revived July 1, 1983)* **Refunding of bond issue held by state by exchange for amortization bonds.** (1) Subject to the approval of the board of investments, the council of any city or town is hereby authorized to issue amortization bonds for the purpose of refunding any outstanding bonds of such city or town held by the state and which were not issued either as amortization or serial bonds and to exchange the same for such outstanding bonds.

(2) Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in 7-7-4209 and shall bear interest at such rate as may be agreed upon between the council of such city or town and the board of investments, but the interest shall not exceed 6% per annum. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same at an election, and it shall not be necessary to publish any notice of sale of such bonds.

(3) This section shall not be construed so as to deprive city or town councils of the right to advertise, sell, and issue refunding bonds in the manner provided in part 43.

History: En. Sec. 29, Ch. 160, L. 1931; re-en. Sec. 5278.29, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2329; amd. Sec. 3, Ch. 500, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "pursuant to 17-5-102" for "but the interest shall not exceed 6% per annum" at the end of the first sentence in (2).

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

Part 43

Municipal Refunding General Obligation Bonds

7-7-4301. Authorization to issue refunding general obligation bonds. The city or town council has power to contract an indebtedness on behalf of a city or town, upon the credit thereof, by issuing bonds for the funding of outstanding warrants and maturing bonds.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-7-4302. Applicability of certain other bond provisions. The provisions of 7-7-4201 through 7-7-4210 and 7-7-4251 through 7-7-4274 apply to refunding bonds issued under this part.

History: En. by Code Commissioner, 1979.

7-7-4303. Term of refunding general obligation bonds. (1) Except as provided in subsection (2), when bonds are issued for the purpose of refunding bonds theretofore issued and outstanding, such bonds shall not be issued for a longer term than 10 years.

(2) If the unexpired term of the bonds to be refunded shall be more than 10 years, the refunding bonds may be issued for such unexpired term.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

7-7-4304. Interest rate on refunding general obligation bonds. No refunding bonds shall be issued unless such refunding bonds shall bear interest at a rate of at least ½ of 1% less than the interest rate of the outstanding bonds to be refunded.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; R.C.M. 1947, 11-2301(part).

7-7-4305 through 7-7-4310 reserved.

7-7-4311. Procedure to issue refunding general obligation bonds. In order to issue bonds to refund bonds theretofore issued and outstanding, it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts with regard to the indebtedness to be refunded, showing the reason for issuing such refunding bonds and fixing and determining the details thereof, giving notice of sale thereof in the same manner that notice is required to be given of sale of bonds authorized at an election and then following the procedure in part 42 for the sale and issuance of such bonds.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; ; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; R.C.M. 1947, 11-2301(part).

7-7-4312. Disposition of proceeds of refunding bonds. Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, it shall be the duty of the city treasurer or town clerk to apply the proceeds derived from the sale of such bonds to the payment of such funded warrants or refunded bonds.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part).

Part 44

Municipal Revenue Bonds

7-7-4401. Short title. This part may be cited as "The Municipal Revenue Bond Act of 1939".

History: En. Sec. 1, Ch. 126, L. 1939; R.C.M. 1947, 11-2401.

7-7-4402. Definitions. Whenever used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) The term "governing body" shall include bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.

(2) The term "municipality" shall include any city or any town, however organized.

(3) The term "undertaking" shall mean any one or a combination of the following:

(a) water and sewer systems, together with all parts thereof and appurtenances thereto including but not limited to supply and distribution systems, reservoirs, dams, and sewage treatment and disposal works;

(b) public airport construction and public airport building;

(c) convention facilities;

(d) public recreation facilities; and

(e) public parking facilities or other revenue-producing facilities and services authorized in these codes for cities and towns.

History: En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1, Ch. 111, L. 1959; amd. Sec. 1, Ch. 254, L. 1969; R.C.M. 1947, 11-2402.

7-7-4403. Interpretation of part. (1) The powers conferred in this part shall be in addition and supplemental to the powers conferred by any other general, special, or local law.

(2) The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued under this part for said purposes, notwithstanding that any general, special, or local law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking or the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law, including but not limited to any requirement for the approval by the voters of any municipality.

(3) Insofar as the provisions of this part are inconsistent with the provisions of any other general, special, or local law, the provisions of this part shall be controlling.

History: **En. Sec. 13, Ch. 126, L. 1939; R.C.M. 1947, 11-2413.**

7-7-4404. Authority to acquire, construct, maintain, and operate various undertakings. In addition to the powers which it may now have, any municipality shall have power under this part to:

(1) construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better, or extend any undertaking, within or without the municipality or partially within or partially without the municipality, and acquire by gift, purchase, or the exercise of the right of eminent domain lands or rights in land or water rights in connection therewith;

(2) operate and maintain any undertaking and furnish the service, facilities, and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of such municipality; and

(3) prescribe and collect rates, fees, and charges for the services, facilities, and commodities furnished by such undertaking.

History: **En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).**

7-7-4405. Pollution abatement. In addition to the powers which it now may have, any municipality shall have the power under this part to:

(1) enter into cooperative agreements with and accept contributions from industrial establishments relative to the planning, construction, lease or other acquisition, maintenance, and operation of undertakings and apply for and accept grants and loans or any other aid which the United States or any agency thereof may give or make to any political subdivision or agency of this state for undertakings, including all necessary actions preliminary thereto, the purpose of which is to aid in the prevention or abatement of water pollution;

(2) make contracts and execute instruments containing such terms, provisions, and conditions as, in the discretion of the governing body of the municipality, may be necessary, proper, or advisable for the purpose of obtaining such aid;

(3) enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the

municipality of sewer facilities when the governing body of such municipality determines such action to be in the public interest and otherwise essential in order to abate or reduce the pollution of waters caused by discharges of industrial waste by such industrial establishment and to provide for the periodical payment by said industrial establishment to the municipality of an amount at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing (including the payment of principal and interest charges, if any) and of operating and maintaining the sewer facilities serving such industrial establishment.

History: **En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).**

7-7-4406. Cooperation among municipalities. (1) Any two or more municipalities, through their respective governing bodies, are hereby authorized and empowered to enter into and perform such contracts and agreements as they may deem proper for or concerning the planning, construction, lease or other acquisition, and the finance of undertakings, in whole or in part, and the maintenance and operation thereof.

(2) Any such municipalities so contracting with each other may also provide in any contract or agreement for a board, commission, or such other body as their governing bodies may deem proper for the supervision and general management of the undertakings and for the operation thereof and may prescribe its powers and duties and fix the compensation of the members thereof.

(3) No municipality shall construct an undertaking wholly or partly within the corporate limits of another municipality except with the consent of the governing body of such other municipality.

History: **(1), (2)En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; Sec. 11-2403, R.C.M. 1947; (3)En. Sec. 11, Ch. 126, L. 1939; Sec. 11-2411, R.C.M. 1947; R.C.M. 1947, 11-2403(part), 11-2411.**

7-7-4407. Role of state agencies. It shall not be necessary for any municipality proceeding under this part to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other like instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate an undertaking, but the supervisory powers and duties of the department of health and environmental sciences shall continue as heretofore.

History: **En. Sec. 12, Ch. 126, L. 1939; amd. Sec. 106, Ch. 349, L. 1964; R.C.M. 1947, 11-2412.**

7-7-4408 through 7-7-4420 reserved.

7-7-4421. Authority to issue revenue bonds. In addition to the powers which it may now have, any municipality shall have power under this part to:

(1) issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(2) pledge to the punctual payment of said bonds issued under this part or part 45 and interest thereon an amount of the revenues of such undertaking (including improvements, betterments, or extensions thereto thereafter

constructed or acquired) or of any part of such undertaking sufficient to pay said bonds and interest as the same shall become due, with such amount consisting of all or any part or portion of such revenue, and create and maintain reasonable reserves therefor.

History: En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).

7-7-4422. Determination of cost. The governing body of the municipality, in determining cost for purposes of 7-7-4421, may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; and interest which it is estimated will accrue during the construction period and for 6 months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this part.

History: En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).

7-7-4423. Nature of revenue bonds. (1) No holder or holders of any bonds issued under this part shall ever have the right to compel any exercise of taxing power of the municipality to pay said bonds or the interest thereon.

(2) Each bond issued under this part shall recite in substance that:

(a) said bond, including interest thereon, is payable from the revenue pledged to the payment thereof; and

(b) said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation or provision.

History: En. Sec. 8, Ch. 126, L. 1939; R.C.M. 1947, 11-2408.

7-7-4424. Undertakings to be self-supporting. (1) The governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of such undertaking and shall revise such rates, fees, or charges from time to time whenever necessary so that such undertaking shall be and always remain self-supporting.

(2) The rates, fees, or charges prescribed shall be such as will produce revenue at least sufficient to:

(a) pay when due all bonds and interest thereon for the payment of which such revenue is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor; and

(b) provide for all expenses of operation and maintenance of such undertaking, including reserves therefor.

History: En. Sec. 9, Ch. 126, L. 1939; R.C.M. 1947, 11-2409.

7-7-4425. Use of revenue from undertaking. (1) Any municipality issuing bonds pursuant to this part for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking shall have the right to appropriate, apply, or extend the revenue of such undertaking for the following purposes:

(a) to pay when due all bonds and interest thereon for the payment of which such revenue is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;

(b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor;

(c) to pay and discharge notes, bonds, or other obligations and interest thereon not issued under this part, for the payment of which the revenue of such undertaking is or shall have been pledged, charged, or encumbered;

(d) to pay and discharge notes, bonds, or other obligations and interest thereon which do not constitute a lien, charge, or encumbrance on the revenue of such undertaking and which shall have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of such undertaking; and

(e) to provide a reserve for betterments to such undertaking.

(2) Unless and until adequate provision has been made for the foregoing purposes, no municipality shall have the right to transfer the revenue of such undertaking to its general fund.

History: En. Sec. 10, Ch. 126, L. 1939; R.C.M. 1947, 11-2410.

7-7-4426. Authorization for undertaking and issuance of bonds. (1) The acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking may be authorized under this part.

(2) Bonds may be authorized to be issued under this part by resolution or resolutions of the governing body of the municipality:

(a) without an election; or

(b) when authorized by a majority of the qualified electors voting upon such question at a special election, should the governing body in its sole discretion choose to submit the question to the electorate.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).

7-7-4427. Special election on question of issuing bonds. (1) When the governing body has chosen to submit the question of issuing bonds to the electorate, the special election shall be noticed and conducted as provided for municipal general obligation bonds in chapter 7, part 42.

(2) The special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking as provided in this part and ordered said special election.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 40, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "for municipal general obligation bonds in chapter 7, part 42" for "in [7-7-4227 through 7-7-4233]"; made minor changes in grammar.

7-7-4428. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under this part may contain covenants as to:

(1) the purpose or purposes to which the proceeds of sale of said bonds may be applied and the use and disposition thereof;

(2) the use and disposition of the revenue of the undertaking for which said bonds are to be issued, including the creation and maintenance of reserves;

(3) the transfer, from the general fund of the municipality to the account or accounts of the undertaking, of an amount equal to the cost of furnishing such municipality or any of its departments, boards, or agencies with the services, facilities, and/or commodities of said undertaking;

(4) the issuance of other or additional bonds payable from the revenue of said undertaking;

(5) the operation and maintenance of such undertaking;

(6) the insurance to be carried thereon and the use and disposition of insurance money;

(7) books of account and the inspection and audit thereof; and

(8) the terms and conditions upon which the holders of said bonds or any proportion of them or any trustee therefor shall be entitled to the appointment of a receiver by the district court, which court shall have jurisdiction in such proceedings and which receiver may enter and take possession of said undertaking; operate and maintain the same; prescribe rates, fees, or charges, subject to the approval of the public service commission of Montana; and collect, receive, and apply all revenue thereafter arising therefrom in the same manner as the municipality itself might do.

History: En. Sec. 5, Ch. 126, L. 1939; R.C.M. 1947, 11-2405(part).

7-7-4429. Remedies. The provisions of this part and any such resolution or resolutions shall be enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding.

History: En. Sec. 5, Ch. 126, L. 1939; R.C.M. 1947, 11-2405(part).

7-7-4430. Presumptions of validity of bonds. (1) Said bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor, any or all the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same.

(2) The validity of said bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which said bonds are issued.

(3) The resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

History: En. Sec. 6, Ch. 126, L. 1939; R.C.M. 1947, 11-2406.

7-7-4431. Liens arising from bonds. The resolution or resolutions shall specify and define the revenues or portion thereof which are appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

History: En. Sec. 7, Ch. 126, L. 1939; amd. Sec. 2, Ch. 52, L. 1949; R.C.M. 1947, 11-2407.

7-7-4432. *(Temporary)* **Details relating to revenue bonds.** Bonds authorized to be issued under this part shall bear interest at such rate or rates not exceeding the limitation of 17-5-102, payable semiannually; may be in one or more series; may bear such date or dates; may mature at such time or times not exceeding 40 years from their respective dates; may be payable in such place or places; may carry such registration privileges; may be subject to such terms of redemption; may be executed in such manner; may contain such terms, covenants, and conditions; and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide.

7-7-4432. *(Revived July 1, 1983)* **Details relating to revenue bonds.** Bonds authorized to be issued under this part shall bear interest at such rate or rates not exceeding 9% per annum, payable semiannually; may be in one or more series; may bear such date or dates; may mature at such time or times not exceeding 40 years from their respective dates; may be payable in such place or places; may carry such registration privileges; may be subject to such terms of redemption; may be executed in such manner; may contain such terms, covenants, and conditions; and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part); amd. Sec. 4, Ch. 500, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "the limitation of 17-5-102" for "9% per annum" near the beginning of the section.

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

7-7-4433. Sale of bonds. (1) Bonds authorized to be issued under this part shall be sold at not less than par.

(2) (a) Said bonds may be sold at private sale to the United States or any agency, instrumentality, or corporation thereof.

(b) Unless sold to the United States or agency, instrumentality, or corporation thereof, said bonds shall be sold at public sale after notice of such sale.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).

7-7-4434. Notice of sale of bonds. (1) Except as provided in subsection (2), the notice of sale of bonds required by 7-7-4433(2)(b) shall be published once at least 5 days prior to such sale:

(a) in a newspaper circulating in the municipality; and

(b) in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California.

(2) In the event the bond issue is in an amount of less than $150,000, the bond issue shall be advertised at least 5 days prior to such sale:

(a) in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco; and

(b) also in a newspaper as specified in part 24 of chapter 5 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).

7-7-4435. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this part. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).

Part 45

Municipal Refunding Revenue Bonds — Option 1

7-7-4501. Authority to issue refunding revenue bonds. (1) In addition to the powers which it now may have, any municipality shall have the power under this part to refund bonds issued for any of the purposes listed in 7-7-4421(1), whether issued under authority of part 45 or of any other applicable law.

(2) Refunding revenue bonds issued as authorized in this section shall be governed by all of the provisions of part 44 as fully as bonds issued for the initial financing of any undertaking and by the further provisions of this part.

(3) Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

History: (1)En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; Sec. 11-2403, R.C.M. 1947; (2), (3)En. 11-2414 by Sec. 1, Ch. 50, L. 1936; Sec. 11-2414, R.C.M. 1947; R.C.M. 1947, 11-2403(part), 11-2414(part).

7-7-4502. Interest rates on refunding revenue bonds. (1) Except as provided in subsection (2), refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least ⅜ of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby if:

(a) they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient; or

(b) the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension and the lien of such new bonds upon the revenues of the undertaking must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(3).

7-7-4503. Exchange or sale of refunding revenue bonds. (1) Refunding revenue bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a price not less than par plus accrued interest.

(2) Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor except in accordance with the terms of such outstanding bond.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(part).

7-7-4504. Deposit of proceeds of refunding revenue bonds in escrow. (1) In any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company. The bank or trust company shall:

(a) have its principal place of business within or without the state;

(b) be a member of the federal reserve system; and

(c) have a combined capital and surplus not less than $1 million.

(2) The proceeds deposited in escrow shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay, when due, the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date and any premium required for redemption on such date. The resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(4).

7-7-4505. Use of excess revenues and pledged reserves. (1) Revenues and other funds on hand in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents.

(2) Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed, as provided in 7-7-4504, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: **En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(5).**

Part 46

Municipal Refunding Revenue Bonds
Option 2

7-7-4601. Short title. This part may be cited as "The Revenue Bond Refinancing Act of 1937".

History: **En. Sec. 1, Ch. 121, L. 1937; R.C.M. 1947, 79-1901.**

7-7-4602. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Enterprise" means any work, undertaking, or project which the municipality is authorized to construct and from which the municipality derives revenues, for the refinancing or the refinancing and improving of which enterprise refunding bonds are issued under this part; and such enterprise includes all improvements, betterments, extensions, and replacements thereto and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

(2) "Federal agency" means the United States, the president of the United States, the federal emergency administrator of public works, or any agency, instrumentality, or corporation of the United States designated or created by or pursuant to any act or joint resolution of the congress of the United States or directly or indirectly owned or controlled by the United States.

(3) "Governing body" means, in the case of a city or town, the council, commission, or other body, board, officer, or officers having charge of the finances thereof.

(4) "Holder of bonds" or "bondholder" (or any similar term) means any person who is the bearer of any outstanding refunding bond, registered to bearer or not registered, or the registered owner of any such outstanding bond which is at the time registered other than to bearer.

(5) "Improving" means reconstructing, replacing, extending, repairing, bettering, equipping, developing, embellishing, or improving or any one or more of the foregoing.

(6) "Law" means any act or statute (general, special, or local) of this state, including without being limited to the charter of any municipality.

(7) "Municipality" means any city or town of this state.

(8) "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds received from the sale thereof, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improving of an enterprise

and payable solely from all or any part of the revenues thereof, including interest thereon in arrears or about to become due, whether or not represented by coupons or interest certificates.

(9) "Refunding bonds" means notes, bonds, certificates, or other obligations of a municipality issued pursuant to this part or pursuant to any other law as supplemented by or in conjunction with this part.

(10) "Revenues" means all fees, tolls, rates, rentals, and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the municipality from the operation of any enterprise or arising from any enterprise.

History: En. Sec. 2, Ch. 121, L. 1937; R.C.M. 1947, 79-1902(part); amd. Sec. 10, Ch. 212, L. 1979.

7-7-4603. Scope of part. (1) This part constitutes full and complete authority for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, approvals, orders, acts, or things by any governing body of any municipality or any board, officer, commission, department, agency, or instrumentality of the state or any municipality shall be required to issue any refunding bonds or to do any act or perform any thing under this part except as may be prescribed in this part.

(2) The powers conferred by this part shall be in addition and supplemental to and not in substitution for and the limitations imposed by this part shall not affect the powers conferred by any other law.

(3) This part is remedial in nature and shall be liberally construed.

History: En. Sec. 16, Ch. 121, L. 1937; R.C.M. 1947, 79-1916.

7-7-4604. Interpretation of part. Nothing in this part shall in any way be deemed to:

(1) alter the terms of any agreements made with the holders of any outstanding notes, bonds, or other obligations of the municipality;

(2) authorize the municipality to alter the terms of any such agreements;

(3) impair or authorize the municipality to impair the rights and remedies of any creditors of the municipality;

(4) authorize any municipality to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provision, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt.

History: En. Sec. 8, Ch. 121, L. 1937; R.C.M. 1947, 79-1908(4), (5).

7-7-4605. Authorization for refinancing and refunding revenue bonds. Any municipality shall have power and is hereby authorized to refinance or to refinance and improve any enterprise and for such purpose or purposes, to borrow money and issue refunding bonds from time to time.

History: En. Sec. 3, Ch. 121, L. 1937; R.C.M. 1947, 79-1903.

7-7-4606. Nature of refunding revenue bonds. (1) No recourse shall be had for the payment of the refunding bonds, interest thereon, or any part thereof against the general fund of any municipality, nor shall the credit or taxing power of any municipality be deemed to be pledged thereto.

(2) The refunding bonds and interest thereon shall not be a debt of the municipality or a charge, lien, or encumbrance, legal or equitable, upon any property of the municipality or upon any income, receipts, or revenues of the municipality, other than such of the revenues of the enterprise as shall have been pledged to the payment thereof. Every refunding bond shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that the municipality is under no obligation to pay the same except from said revenues.

History: En. Sec. 9, Ch. 121, L. 1937; R.C.M. 1947, 79-1909.

7-7-4607. Exemption from certain taxes for refunding revenue bonds. The refunding bonds and the income therefrom shall be exempt from taxation except inheritance, estate, and transfer taxes.

History: En. Sec. 10, Ch. 121, L. 1937; R.C.M. 1947, 79-1910.

7-7-4608. Refunding revenue bonds to be fully negotiable. Notwithstanding the form or tenor thereof and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be and shall be treated as fully negotiable within the meaning of and for the purposes of the Uniform Commercial Code—Investment Securities.

History: En. Sec. 5, Ch. 121, L. 1937; amd. Sec. 11-153, Ch. 264, L. 1963; R.C.M. 1947, 79-1905(part).

7-7-4609. Presumptions of validity of refunding revenue bonds. (1) Refunding bonds bearing the signatures of officers of the municipality in office on the date of the signing thereof shall be valid and binding obligations of the municipality for all purposes, notwithstanding that before the delivery thereof, any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality, the same as if such persons had continued to be officers of the municipality until after the delivery thereof.

(2) The validity of the authorization and issuance of the refunding bonds shall not be dependent on or affected in any way by proceedings taken for the improving of any enterprise for the refinancing and improving of which the refunding bonds are to be issued or by contracts made in connection with the improving of any such enterprise.

(3) Any resolution authorizing refunding bonds may provide that any such refunding bond may contain a recital that such refunding bond is issued pursuant to this part, and any refunding bond containing such recital under authority of any such resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this part.

History: En. Sec. 6, Ch. 121, L. 1937; R.C.M. 1947, 79-1906.

7-7-4610. Details relating to refunding revenue bonds. The refunding bonds may, as provided by resolution of the governing body of the municipality:

(1) be issued in one or more series, bear such date or dates, and mature at such time or times, not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, and, in any event, not exceeding 40 years from their respective dates;

(2) bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby;

(3) be in such denomination or denominations and be in such form, either coupon or registered;

(4) carry such registration and conversion privileges;

(5) be executed in such manner;

(6) be payable in such medium of payment and at such place or places;

(7) be subject to such terms of redemption, with or without a premium;

(8) be declared or become due before the maturity date thereof;

(9) provide for the replacement of mutilated, destroyed, stolen, or lost bonds;

(10) be authenticated in such manner and upon compliance with such conditions; and

(11) contain such other terms and covenants.

History: **En. Sec. 5, Ch. 121, L. 1937; amd. Sec. 11-153, Ch. 264, L. 1963; R.C.M. 1947, 79-1905(part).**

7-7-4611 through 7-7-4620 reserved.

7-7-4621. Resolution for issuance of refunding revenue bonds. (1) The refunding bonds shall be authorized by resolution of the governing body of the municipality. Such resolution may be adopted at a regular or special meeting and at the same meeting at which they are introduced by a majority of all the members of the governing body then in office. Such resolution shall take effect immediately upon the adoption thereof.

(2) No other proceedings or procedure of any character whatever shall be required for the issuance of refunding bonds by the municipality.

History: **En. Sec. 4, Ch. 121, L. 1937; R.C.M. 1947, 79-1904.**

7-7-4622. Permissible covenants for refunding revenue bonds. (1) The governing body of any municipality shall have power, in addition to the other powers conferred by this part, to insert provisions in any resolution authorizing the issuance of refunding bonds, which shall be a part of the contract with the holders of the refunding bonds, as to:

(a) limitations on the purpose to which the proceeds of sale of any issue of refunding bonds or any notes, bonds, or other obligations then or thereafter to be issued to finance the improving of the enterprise may be applied;

(b) limitations on the issuance of additional refunding bonds or additional notes, bonds, or other obligations to finance the improving of the enterprise and on the lien thereof;

(c) limitations on the right of the municipality or its governing body to restrict and regulate the use of the enterprise;

(d) the amount and kind of insurance to be maintained on the enterprise and the use and disposition of insurance money;

(e) pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(f) covenanting against pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(g) events of default and terms and conditions upon which any or all of the refunding bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(h) the rights, liabilities, powers, and duties arising upon the breach by it of any covenants, conditions, or obligations;

(i) the vesting in a trustee or trustees of the right to enforce any covenants made to secure, to pay, or in relation to the refunding bonds, as to the powers and duties of such trustee or trustees and the limitation of liabilities thereof, and as to the terms and conditions upon which the holders of the refunding bonds or any proportion or percentage of them may enforce any covenants made under this part or duties imposed hereby;

(j) a procedure by which the terms of any resolution authorizing refunding bonds or any other contract with bondholders, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated and as to the amount of refunding bonds the holders of which must consent thereto and the manner in which such consent may be given;

(k) the execution of all instruments necessary or convenient in the exercise of the powers granted by this part or in the performance of the duties of the municipality and the officers, agents, and employees thereof;

(l) refraining from pledging or in any manner whatever claiming or taking the benefit or advantage of any stay or extension law whenever enacted or at any time hereafter in force which may affect the duties or covenants of the municipality in relation to the refunding bonds, the performance thereof, or the lien of such refunding bonds;

(m) the purchase out of any funds available therefor, including but not limited to the proceeds of refunding bonds, of any outstanding notes, bonds, or obligations, including but not limited to refunding bonds, and the price or prices at which and the manner in which such purchases may be made;

(n) any other acts and things as may be necessary or convenient or desirable in order to secure the refunding bonds or as may tend to make the refunding bonds more marketable.

(2) Nothing in this section shall be construed to authorize any municipality to make any covenants, to perform any act, or to do anything which shall require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: **En. Sec. 13, Ch. 121, L. 1937; R.C.M. 1947, 79-1913.**

7-7-4623. Security for refunding revenue bonds. (1) The refunding bonds shall be special obligations of the municipality and shall be payable from and secured by a lien upon the revenues of the enterprise, as shall be more fully described in the resolution of the governing body authorizing the issuance of the refunding bonds. Subject to the constitution of the state of Montana and to the prior or superior rights of any person, any municipality shall have power, by resolution of its governing body, to pledge and assign for the security of the refunding bonds all or any part of the gross or the net revenues of such enterprise.

(2) (a) As additional security for any issue of refunding bonds hereunder or any part thereof, any municipality shall have power and is hereby authorized, by resolution of its governing body, to confer upon the holders of the refunding bonds all rights, powers, and remedies which said holders would be

entitled to if they were the owners and had possession of the notes, bonds, or other obligations for the refinancing of which such refunding bonds shall have been issued, including but not limited to the preservation of the lien of such notes, bonds, or other obligations without extinguishment, impairment, or diminution thereof.

(b) In the event any municipality exercises the power conferred by this subsection:

(i) each refunding bond shall contain a recital to the effect that the holder thereof has been granted the additional security provided by this subsection; and

(ii) each note, bond, certificate, or other obligation of the municipality to be refinanced by any such refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds and interest thereon have been finally paid and discharged but shall be stamped with a legend to the effect that such note, bond, certificate, or other obligation has been refunded pursuant to the Revenue Bond Refinancing Act of 1937.

(3) All refunding bonds of the same issue shall be equally and ratably secured, without priority by reason of number or date of bond, of sale, of execution, or of delivery, by a lien upon the revenues of the enterprise in accordance with the provisions of this section and the resolution authorizing the issuance of such refunding bonds.

History: En. Sec. 8, Ch. 121, L. 1937; R.C.M. 1947, 79-1908(1) thru (3).

7-7-4624. Use of fiscal agent. Any municipality shall have power, in connection with the issuance of refunding bonds:

(1) to appoint a fiscal agent;

(2) to provide for the powers, duties, and functions and compensation of such fiscal agent;

(3) to limit the liabilities of such fiscal agent;

(4) to prescribe a method for the resignation, removal, merger, or consolidation of such fiscal agent and the appointment of a successor fiscal agent and the transfer of rights and properties to such successor fiscal agent.

History: En. Sec. 11, Ch. 121, L. 1937; R.C.M. 1947, 79-1911.

7-7-4625. Sale or exchange of refunding revenue bonds. (1) The refunding bonds may be sold or exchanged in installments at different times, or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time.

(2) The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, certificates, or other obligations to be refinanced thereby.

History: En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(1).

7-7-4626. Details relating to sales of refunding revenue bonds. If the governing body determines to sell any refunding bonds, such refunding bonds shall be sold at not less than par, at public or private sale, and in such manner and upon such terms as the governing body shall deem best for the interests of the municipality.

History: En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(3).

7-7-4627. Details relating to exchanges of refunding revenue bonds. (1) If the governing body determines to exchange any refunding bonds, such refunding bonds may be exchanged privately for and in payment and discharge of any of the outstanding notes, bonds, or other obligations of the municipality issued to finance or to aid in financing the acquisition, construction, improving, refinancing, or improving and refinancing of an enterprise.

(2) The refunding bonds may be exchanged for a like or greater principal amount of such notes, bonds, or other obligations of the municipality, except that the principal amount of the refunding bonds may exceed the principal amount of such outstanding notes, bonds, or other obligations to the extent necessary or advisable, in the discretion of the governing body, to fund interest in arrears or about to become due.

(3) The holder or holders of such outstanding notes, bonds, or other obligations need not pay accrued interest on the refunding bonds to be delivered in exchange therefor if and to the extent that interest is due or accrued and unpaid on such outstanding notes, bonds, or other obligations to be surrendered.

History: En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(2).

7-7-4628. Payment of bonds. (1) In order that the payment of the refunding bonds and interest thereon shall be adequately secured, any municipality issuing refunding bonds pursuant to this part and the proper officers, agents, and employees thereof are hereby directed and it shall be the mandatory duty of such officers, agents, and employees under this part and it shall further be of the essence of the contract of such municipality with the bondholders, at all times:

(a) to pay or cause to be paid punctually the principal of every refunding bond and the interest thereon on the date or dates and at the place or places and in the manner and out of the funds mentioned in such refunding bonds and in the coupons thereto appertaining and in accordance with the resolution authorizing their issuance;

(b) to preserve and protect the security of the refunding bonds and the rights of the holders thereof and warrant and defend such rights against all claims and demands of all persons whomsoever;

(c) to hold in trust the revenues pledged to the payment of the refunding bonds for the benefit of the holders of the refunding bonds and to apply such revenues only as provided by the resolution authorizing the issuance of the refunding bonds, or if such resolution shall thereafter be modified in the manner provided therein or herein, only as provided in such resolution as modified.

(2) None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: En. Sec. 12, Ch. 121, L. 1937; R.C.M. 1947, 79-1912(1), (a), (d), (f), (2).

7-7-4629. Management of enterprise. (1) In order that the payment of the refunding bonds and interest thereon shall be adequately secured, any municipality issuing refunding bonds pursuant to this part and the proper officers, agents, and employees thereof are hereby directed and it shall be the mandatory duty of such officers, agents, and employees under this part and it shall further be of the essence of the contract of such municipality with the bondholders, at all times:

(a) to operate the enterprise in an efficient and economical manner and establish, levy, maintain, and collect such fees, tolls, rentals, rates, and other charges in connection therewith as may be necessary or proper, which fees, tolls, rates, rentals, and other charges shall be at least sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates:

(i) to pay all current expenses of operation, maintenance, and repair of such enterprise;

(ii) to pay the interest on and principal of the refunding bonds as the same shall become due and payable;

(iii) to comply in all respects with the terms of the resolution authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds; and

(iv) to meet any other obligations of the municipality which are charges, liens, or encumbrances upon the revenues of such enterprise;

(b) to operate, maintain, preserve, and keep or cause to be operated, maintained, preserved, and kept the enterprise and every part and parcel thereof in good repair, working order, and condition;

(c) to pay and discharge or cause to be paid or discharged any and all lawful claims for labor, materials, and supplies which, if unpaid, might by law become a lien or charge upon the revenues or any part thereof prior or superior to the lien of the refunding bonds or which might impair the security of the refunding bonds, to the end that the priority and security of the refunding bonds shall be fully preserved and protected;

(d) to keep proper books of record and accounts of the enterprise (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the enterprise or any part thereof and which, together with all other books and papers of the municipality, shall at all times be subject to the inspection of the holder or holders of not less than 10% of the refunding bonds then outstanding or his or their representatives duly authorized in writing.

(2) None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: **En. Sec. 12, Ch. 121, L. 1937; R.C.M. 1947, 79-1912(1), (b), (c), (e), (g), (2).**

7-7-4630. Right to receivership upon default. (1) Any holder of refunding bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to the district court or any court of competent jurisdiction for the appointment of a receiver of the enterprise, whether or not all refunding bonds have been declared due and payable and whether or not such holder or trustee therefor is seeking or has sought to enforce any other right or exercise any remedy in connection with such refunding bonds:

(a) in the event that the municipality shall default in the payment of the principal or interest on any of the refunding bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days; or

(b) in the event that the municipality or the governing body or officers, agents, or employees thereof shall fail or refuse to comply with the provisions of this part or shall default in any agreement made with the holders of the refunding bonds.

(2) Upon such application, the district court may appoint and if the application is made by the holders of 25% in principal amount of such refunding bonds then outstanding or any trustee for holders of such refunding bonds in such principal amount shall appoint a receiver of the enterprise.

History: **En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(1).**

7-7-4631. Role of receiver. (1) The receiver appointed pursuant to 7-7-4630 shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the enterprise and each and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage, and control the same and each and every part thereof and, in the name of the municipality or otherwise as the receiver may deem best, shall exercise all the rights and powers of the municipality with respect to the enterprise as the municipality itself might do.

(2) Such receiver shall:

(a) maintain, restore, insure, and keep insured the enterprise and from time to time make all such necessary or proper repairs as may seem expedient to such receiver;

(b) establish, levy, maintain, and collect such fees, tolls, rentals, and other charges in connection with the enterprise as such receiver may deem necessary or proper and reasonable; and

(c) collect and receive all revenues and deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

(3) Such receiver shall, in the performance of the powers conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein.

History: **En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(2), (4).**

7-7-4632. Procedure to return enterprise from receiver to municipality. (1) Whenever all that is due upon the refunding bonds and interest thereon and upon any other notes, bonds, or other obligations and interest thereon having a charge, lien, or encumbrance on the revenues of the enterprise and under any of the terms of any covenants or agreements with bondholders shall have been paid or deposited as provided therein and all defaults shall have been cured and made good, the court may in its discretion, after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the enterprise to the municipality.

(2) The same right of the holders of the refunding bonds to secure the appointment of a receiver exists upon any subsequent default as provided in 7-7-4630 and 7-7-4631.

History: **En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(3).**

7-7-4633. Remedies of holders of refunding revenue bonds. (1) Subject to any contractual limitations binding upon the holders of any issue of refunding bonds or trustee therefor, including but not limited to the restriction of the exercise of any remedy to the specified proportion of percentage of such holders, any holder of refunding bonds or trustee therefor shall have the right and power, for the equal benefit and protection of all holders of refunding bonds similarly situated:

(a) by mandamus or other suit, action, or proceeding at law or in equity, to enforce his rights against the municipality and its governing body and any of its officers, agents, and employees and to require and compel such municipality or such governing body or any such officers, agents, or employees to perform and carry out its and their duties and obligations under this part and its and their covenants and agreements with bondholders;

(b) by action or suit in equity, to require the municipality and the governing body thereof to account as if they were the trustee of an express trust;

(c) by action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(d) to bring suit upon the refunding bonds.

(2) (a) No remedy conferred by this part upon any holder of refunding bonds or any trustee therefor is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part or by any other law.

(b) No waiver of any default or breach of duty or contract, whether by any holder of refunding bonds or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

(c) Every substantive right and every remedy conferred upon the holders of refunding bonds may be enforced and exercised from time to time and as often as may be deemed expedient.

(3) In case any suit, action, or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned or shall be determined adversely to the holder of the refunding bonds or any trustee therefor, then and in every such case the municipality and such holder or trustee shall be restored to their former positions and rights and remedies as if no such suit, action, or proceeding had been brought or taken.

History: **En. Sec. 15, Ch. 121, L. 1937; R.C.M. 1947, 79-1915.**

CHAPTER 8

ACQUISITION, TRANSFER, AND MANAGEMENT OF PROPERTY AND BUILDINGS

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Part 1

General Provisions Related to Local Government

7-8-101. Authorization to transfer property between certain governmental entities. (1) A county, upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for 3 weeks in a newspaper published in such city, town, or county in which located, shall have power to sell or trade to any city, town, or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the county business, without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of the county commissioners involved and entered in the minutes of the regular or special meetings.

(2) A city or town, upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for 3 weeks in a newspaper published in such city or town or county in which located, shall have power to sell or trade to any county or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the city or town business, without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of the councils or commissions involved and entered in the minutes of the regular or special meetings.

(3) (a) A county shall have power to trade with or purchase from any city, town, or political subdivision such property without an appraisal of the property traded or purchased.

(b) A city or town shall have power to trade with or purchase from any county or political subdivision such property without an appraisal of the property traded or purchased.

History: **(1)En. Sec. 1, Ch. 302, L. 1969; Sec. 16-1009.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 301, L. 1969; Sec. 11-964.1, R.C.M. 1947; (3)(a)En. Sec. 2, Ch. 302, L. 1969; Sec. 16-1007.1, R.C.M. 1947; (3)(b)En. Sec. 2, Ch. 301, L. 1969; Sec. 11-964.2, R.C.M. 1947; R.C.M. 1947, 11-964.1, 11-964.2, 16-1007.1, 16-1009.1.**

7-8-102. Authorization to deed county land to other governmental entities. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a park, recreational grounds, or cemetery and to be maintained by the state, city, town, or federal government as a public park, recreational grounds, or cemetery.

(2) Said land shall be deeded to the state, city, town, or federal government without charge but upon the condition that the same shall be devoted and maintained by the state, city, town, or federal government for the purpose specified in subsection (1). In the event that the land shall cease to be used for such purpose for a period of 5 years in succession, the title thereto shall revert to the county making such grant.

History: **En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).**

7-8-103. Authorization for governmental and public entities to take property by gift or devise. (1) (a) All counties, all public hospitals and cemeteries, and other public institutions are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of real or personal property and the right to own, hold, work, and improve the same.

(b) The provisions of subsection (2) and 7-8-104 are hereby made expressly applicable to gifts, donations, grants, devises, and bequests of real or personal property to officers and boards of the public corporations and institutions mentioned in subsection (1)(a).

(2) (a) Any city or town organized under the laws of Montana is hereby empowered and given the right:

(i) to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest; any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state;

(ii) to own, hold, work, and improve the same.

(b) Said gifts, donations, grants, devises, or bequests made to any officer or board of any such city or town shall be considered a gift, donation, grant, devise, or bequest made for the use and benefit of any such city or town and shall be administered and used by and for such city or town for the particular purpose for which the same was given, donated, granted, devised, or bequeathed. In the event no particular purpose is mentioned in such gift, donation, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of any such city or town.

History: Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; Ap. p. Sec. 2, Ch. 47, L. 1927; re-en. Sec. 5668.18, R.C.M. 1935; Sec. 11-1007, R.C.M. 1947; Ap. p. Sec. 1, Ch. 10, L. 1917; re-en. Sec. 5043, R.C.M. 1921; re-en. Sec. 5043, R.C.M. 1935; Sec. 11-1004, R.C.M. 1947; Ap. p. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; Sec. 11-1005, R.C.M. 1947; R.C.M. 1947, 11-1004, 11-1005(part), 11-1006(part), 11-1007.

7-8-104. Who may make gift or devise to governmental entities. (1) Any company, partnership, corporation, or other nonindividual entity may make to a city or town organized under the laws of Montana a donation, gift, or grant of any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of Montana, to be held for the use and benefit of the city or town.

(2) Any person over the age of 18 years and of sound mind and discretion may make to a city or town organized under the laws of Montana a gift, grant, donation, or testamentary disposition of property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state.

History: En. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; R.C.M. 1947, 11-1005(part); amd. Sec. 11, Ch. 311, L. 1979.

Part 2

Joint City-County Building

7-8-201. Acquisition or construction and management of city-county building. A city and a county may, by contract, construct, purchase, or lease and manage a city-county building to house the offices of city government and county government.

History: En. Sec. 1, Ch. 45, L. 1967; R.C.M. 1947, 11-4201.

7-8-202. Contents of contract between city and county. The contract shall provide:

(1) for the proposed expenditure for the construction, purchase, or lease of the city-county building and the proposed cost of equipping and operating the building;

(2) for the management of the building by a method which will provide that the city and county shall each be represented and have an active part in the management of the building;

(3) that the management of the joint institution shall have such powers as will be necessary to accomplish the purposes of this part.

History: En. Sec. 2, Ch. 45, L. 1967; R.C.M. 1947, 11-4202(part).

7-8-203. Division of cost. The total cost of the joint institution shall be divided between the city and county in such manner as they shall determine.

History: En. Sec. 2, Ch. 45, L. 1967; R.C.M. 1947, 11-4202(part).

7-8-204. Bonding authority undiminished. This part shall not be interpreted as modifying or diminishing the bonding authority of counties or cities as provided by law.

History: En. Sec. 3, Ch. 45, L. 1967; R.C.M. 1947, 11-4203.

Parts 3 through 20 reserved

Part 21

County Buildings and Equipment

7-8-2101. Provision of rooms for county purposes. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to provide suitable rooms for county purposes when there are no necessary county buildings.

History: En. Subd. 7, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.6, R.C.M. 1935; R.C.M. 1947, 16-1006.

7-8-2102. Erection and maintenance of county buildings. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause to be erected, furnished, and maintained a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof and such other public buildings as may be necessary.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-8-2103. Authorization to create county building commission. (1) The board of county commissioners shall have the power to create a commission for the management of such civic center, youth center, park buildings, museums, county parks, recreation centers, hospitals, or any combination of two or more thereof. Such commission shall be composed of the chairman of the board of county commissioners and five lay members to be appointed by the board. In cases where a commission has been appointed, the commission, together with the board, shall have the power to employ a manager.

(2) The terms of office for the first lay members of the commission shall be, respectively, one for 1 year, two for 2 years, and two for 3 years. On the expiration of such terms of figures 1, 2, and 3 years, their successors shall hold for 3 years each.

(3) All of the above persons shall serve without compensation.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-8-2104. Insurance of county buildings. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to insure the county buildings in the name of and for the benefit of the county and shall have the power to use the proceeds of any insurance policy which may be paid by reason of a loss covered thereby for the purpose of rebuilding the structure lost or damaged or, if the fire insurance proceeds are less than $25,000, for building new structures or buildings.

History: En. Subd. 16, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.15, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1953; R.C.M. 1947, 16-1018.

7-8-2105 through 7-8-2110 reserved.

7-8-2111. Inventory of county tools and equipment. It shall be the duty of the board of county commissioners to prepare and file with the county clerk and recorder an annual inventory covering all county tools, machinery, and equipment.

History: En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; R.C.M. 1947, 16-1024(part).

7-8-2112. Written agreements for loan or lease of county tools and equipment. Whenever county tools, machinery, or equipment are loaned or leased to private individuals, firms, associations, organizations, or corporations, they shall execute a written agreement stating the purpose of such loan or lease, the compensation to be paid the county, and that such tools, machinery, and equipment will be returned in good condition.

History: En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; R.C.M. 1947, 16-1024(part).

Part 22

Acquisition, Transfer, and Management of County Property

7-8-2201. Authorization for county to obtain property. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to purchase, receive by donation, or lease any real or personal property necessary for the use of the county and to preserve, take care of, manage, and control the same.

History: **En. Subd. 8, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 74, L. 1933; re-en. Sec. 4465.7, R.C.M. 1935; R.C.M. 1947, 16-1007(part).**

7-8-2202. Appraisal required for certain purchases of real property. Unless otherwise provided, no purchase of real property exceeding the value of $100 must be made unless the value of the same has been previously estimated by three disinterested citizens of the county appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor.

History: **En. Subd. 8, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 74, L. 1933; re-en. Sec. 4465.7, R.C.M. 1935; R.C.M. 1947, 16-1007(part).**

7-8-2203 through 7-8-2210 reserved.

7-8-2211. Authorization to sell county property. (1) The board of county commissioners of the several counties in this state shall have the power to sell any real or personal property, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property.

(2) Whenever a county purchases equipment as provided in 7-5-2301 through 7-5-2308, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal as provided in 7-8-2214 or may be sold at public auction as provided in 7-8-2212, in the discretion of the board.

History: **En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).**

7-8-2212. Notice of sale and public auction required for certain sales. Unless otherwise provided, if the real or personal property sought to be sold is reasonably of a value in excess of $100 for real property or $2,500 for personal property, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county. The notice shall be published once a week for 4 successive weeks and posted in five public places in the county.

History: **En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).**

7-8-2213. Terms of sale. (1) The sale shall be for cash or on such terms as the board of county commissioners may approve provided at least 20% of the purchase price shall be paid in cash. All deferred payments on the purchase price of any property sold shall bear interest at the rate of 6% per annum, payable annually, and may be extended over a period of not more than 5 years.

(2) No sale shall be made at public auction or to any school district without public auction for less than 90% of the appraised value.

(3) No title to any property sold under the provisions of 7-8-2211 through 7-8-2220 shall pass from the county until the purchaser or his assigns shall have paid the full amount of the purchase price therefor into the county treasury for the use and benefit of the county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2214. Appraisal required for certain sales. Unless otherwise provided:

(1) in all sales of property of a value in excess of $100 for real property and $2,500 for personal property, there must, before any sale, be an appraisal thereof by the board and at a price representing a fair market value of such property. Such appraised value shall be stated in the notice of sale.

(2) no sale shall be made at public auction or to any school district without public auction of any property unless it has been appraised within 3 months prior to the date of the sale.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2215. Procedure to challenge appraised value. (1) Any taxpayer who may believe that such appraised value is less than the actual value of the property may, at any time before the day fixed for the sale of such property, file with the board of county commissioners written objections to such appraised value.

(2) When any such objection is filed, it vacates the sale and the board must at once apply to the judge of the district court to have such property reappraised.

(3) (a) Upon such application, the district judge shall appoint for purpose of reappraisal three disinterested persons. Such appraisers, when appointed by the district judge and after filing their appraisal report with the county clerk and recorder, shall be allowed $5 per day for each day necessarily employed in making such appraisal and their necessary and actual expenses.

(b) The appraisal of the persons appointed under subsection (3)(a) must be made and filed with the county clerk and recorder. The new appraisal or reappraisal shall be used in the next sale of such property.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2216. Sale of county property to school district. (1) The board of county commissioners shall have the power to sell directly to the school district, without the necessity of a public auction, any real or personal property, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, for its appraised value, which shall represent a fair market value of such property.

(2) If the property to be sold to the school district is reasonably of a value in excess of $100 for real property and $2,500 for personal property, notice of the sale shall be given by publication in a newspaper in said county. The notice shall be published once a week for 4 successive weeks and posted in five public places in the county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(2).

7-8-2217. Procedure for sale of property of lesser value. (1) If the property to be sold is reasonably of a value of less than $100 for real property and $2,500 for personal property, sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners may appear to be to the best interests of the county.

(2) If it be at public sale, notice shall be given by posting in five public places in the county at least 5 days before the date of sale.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2218. Procedure if property not sold at public auction. If no bid or offer is made for any property offered for sale at public auction, after notice and appraisal given as provided in 7-8-2212 and 7-8-2214, the board of county commissioners may, at any time thereafter, sell such property at private sale and may on such private sale accept as the purchase price therefor an amount not less than 90% of the appraised value thereof.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2219. Exchange of county land in case of failure to make sale. If within 1 year no immediate sale be had of real estate attempted to be sold under the provisions of 7-8-2211 through 7-8-2220, the board of county commissioners may make trades or exchanges of such real estate owned by the county for any other lands or real estate of equal value located within the same county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(5).

7-8-2220. Use of sales proceeds for construction or alteration of county jail or hospital. The funds derived from the sale, in the discretion of the board of county commissioners, may be credited to a construction reserve account and thereafter used for capital outlay for present or future construction of or an addition to a courthouse or county jail or county hospital.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(6).

7-8-2221 through 7-8-2230 reserved.

7-8-2231. Authorization to lease county property. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. Such leases shall be in such manner and for such purposes as, in the judgment of the board, shall seem best suited to advance the public benefit and welfare.

(2) Except as provided in 7-8-2233:

(a) all such property must be leased subject to sale by the board; and

(b) no lease shall be for a period to exceed 10 years.

History: **En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part).**

7-8-2232. Distribution of lease revenue. All revenue derived from leases authorized by 7-8-2231, except as otherwise provided, shall be paid into the county treasury. On January 10 and July 10 in each year, the county treasurers shall distribute such revenue to the several county and trust and agency funds on the basis of the tax levy for the preceding calendar year.

History: **En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part).**

7-8-2233. Special provisions relating to coal leases. (1) Leases for deposits of coal only or for coal and the surface above the same owned by any county or to which any county acquires title by tax title, tax deed, or otherwise may be for a period of 10 years and as long thereafter as coal is being mined and extracted from the leased property in commercial quantities.

(2) As to all such deposits of coal only or coal and surface, the provisions of the laws of Montana relating to the sale by the county commissioners of a county of property owned by the county or acquired by tax title or otherwise shall be suspended during the time any such lease or leases of coal only or coal and surface made under 7-8-2231 shall be in force and effect.

History: **En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part).**

Part 23

Sale of Tax-Deed Land

7-8-2301. Auction sale of county tax-deed land. (1) Whenever the county shall acquire any land by tax deed, it shall be the duty of the board of county commissioners, within 6 months after acquiring title, to make and enter an order for sale of such lands at public auction at the front door of the courthouse.

(2) No sale shall be made for a price less than the fair market value thereof, as determined and fixed by the board prior to making the order of sale.

History: **En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part).**

7-8-2302. Notice of sale of tax-deed lands. (1) Thirty days' notice of the sale provided for in 7-8-2301 shall be given by publication in a newspaper printed in the county. Such notice shall be published once a week for 3 consecutive weeks and shall be posted in at least three public places in the county.

(2) Posted and published notice shall be signed by the county clerk, and one notice may include a list of all lands to be sold, the appraised value of the same, and the time and place of sale. The fair market value as determined under 7-8-2301 shall be stated in the notice of sale.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part).

7-8-2303. Repurchase rights of taxpayer or successors. At any time before the time fixed for the first offering of property for sale pursuant to 7-8-2301, notice of which has been given as provided in 7-8-2302, the taxpayer or successor in interest or legal representative whose property shall hereafter be deeded to the county may purchase such property, subject to the reservations hereinafter provided, by payment to the county of the full amount of the taxes, penalties, and interest due on said land at the time of taking said tax deed. Such purchase and payment may be effected by an installment contract with annual payments as hereinafter provided.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part).

7-8-2304. Terms for sale of tax-deed land. (1) Such sale shall be made for cash or, in the case of real property, on such terms as the board of county commissioners may approve.

(2) (a) If such sale is made on terms, at least 20% of the purchase price shall be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All such deferred payments shall bear interest at the rate of 8% per annum.

(b) If a sale is made on terms, the chairman of the board shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the department of revenue.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969; R.C.M. 1947, 84-4191(part).

7-8-2305. Deed of conveyance — reservation of mineral royalty. (1) Subject to the provisions of subsection (2), upon payment of the purchase price in full, together with all interest which may become due on any installment or deferred payments, the chairman of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser or his assigns or such other instruments as shall be sufficient to convey all of the title of the county in and to the property so sold.

(2) The county may in the discretion of the board reserve not to exceed 6 ¼% royalty interest in the oil, gas, other hydrocarbons, and minerals produced and saved from said land.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969; R.C.M. 1947, 84-4191(part).

7-8-2306. Distribution of sale and lease proceeds. The proceeds of every sale or lease under this part or part 25 shall be paid over to the county treasurer, who shall apportion and distribute the same in the following manner:

(1) (a) Upon a sale of such property, the proceeds of each sale up to the amount of $10 shall be credited to the county general fund to reimburse such for expenditures made therefrom in connection with the procurement of the tax deed and holding of the sale.

(b) Upon a sale of the property, if there be any amount remaining of such proceeds after the payment of the amount specified in subsection (1)(a) and such remainder is:

(i) in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty and interest, then so much of such remaining proceeds shall be credited to each fund or purpose as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county; or

(ii) is less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes.

(2) Whenever tax-deed lands have been sold and the county has reserved a royalty interest, any sums of money received from such royalty interest shall be credited to the general fund of the county except that the board of county commissioners may allocate to the county road fund not more than 50% of the money received from reserved royalty interests.

(3) Upon a lease of the property, except as otherwise provided, the amount received as rent, royalty, or otherwise, including interest received on the payments under either a sale or lease, shall be apportioned on the current year's levy and shall be credited as earnings of tax-deed property and not considered as a credit to tax-deed accrued accounts as in the case of the principal received from sales of tax-deed lands.

History: En. Sec. 6, Ch. 171, L. 1941; amd. Sec. 1, Ch. 81, L. 1943; amd. Sec. 1, Ch. 144, L. 1955; R.C.M. 1947, 84-4195; amd. Sec. 2, Ch. 105, L. 1979.

7-8-2307. Tax liability of purchased tax-deed lands. (1) On January 1 following the execution of such contract or deed, the land shall be subject to taxation in the name of the purchaser or his assignee.

(2) In the event the taxes are not paid and the same become delinquent, said contract shall be subject to cancellation and all payments theretofore made shall be taken, treated, and regarded as rent for said property.

History: En. Sec. 3, Ch. 171, L. 1941; amd. Sec. 14, Ch. 388, L. 1975; R.C.M. 1947, 84-4192.

7-8-2308. Sale of lands of less than fifty dollar valuation and other than tax-deed lands. Property belonging to the county of the value of less than $50 and property of the county acquired by means other than by tax deed may be sold as provided by 7-8-2211 through 7-8-2220 and, except so far as they may conflict with the provisions of this part, 7-8-2211 through 7-8-2220 shall remain in force and effect. Nothing herein contained shall be construed as repealing 7-8-2401 through 7-8-2403.

History: En. Sec. 8, Ch. 171, L. 1941; R.C.M. 1947, 84-4197.

Part 24

Exchange of Tax-Deed Land With United States

7-8-2401. Authorization to exchange tax-deed land with United States for certain purposes. (1) All real property acquired by any county under tax title which in the judgment of the board of county commissioners is suitable for the production of trees or as a watershed or for other national forest purposes may be conveyed by deed to the United States by the board in exchange for government land or timber, if in the discretion of the board it is to the advantage and best interests of the county to make such exchange.

(2) The board is hereby authorized to accept from the United States for and on behalf of the county, as full compensation for such county land so exchanged, title to land or timber of the United States equal in value to the appraised value of the county land so exchanged for the same.

(3) No public notice of the intention to convey title to the United States to any of the property subject to this part shall be necessary. The board shall have authority to defray all expenses necessarily incident to such exchange.

History: (1), (2)En. Sec. 1, Ch. 150, L. 1935; re-en. Sec. 4487.2, R.C.M. 1935; Sec. 16-1132, R.C.M. 1947; (3)En. Sec. 4, Ch. 150, L. 1935; re-en. Sec. 4487.5, R.C.M. 1935; Sec. 16-1135, R.C.M. 1947; R.C.M. 1947, 16-1132, 16-1135(part).

7-8-2402. Disposal of land and timber acquired by county pursuant to exchange agreement with United States. (1) Any timber acquired from the United States in any exchange may be disposed of by the county commissioners by agreement with the United States department of agriculture that such timber shall be cut and removed by any agency selected by the United States department of agriculture, with the understanding that the stumpage payments for timber so cut will be paid over to the county in cash as full compensation for the county land exchanged to the United States. The amount of such stumpage payments, so paid over, shall equal the appraised value of the county land exchanged for same, and such cash payments shall be deposited in the county treasury for the use of the county.

(2) All land and all timber not subject to the arrangement authorized in subsection (1) and acquired by the county under the provisions of this part may be sold by the board of county commissioners in the manner provided by law for the sale of county property, and the proceeds of such sale shall be deposited in the county treasury for the use of the county.

History: (1)En. Sec. 2, Ch. 150, L. 1935; re-en. Sec. 4487.3, R.C.M. 1935; Sec. 16-1133, R.C.M. 1947; (2)En. Sec. 3, Ch. 150, L. 1935; re-en. Sec. 4487.4, R.C.M. 1935; Sec. 16-1134, R.C.M. 1947; R.C.M. 1947, 16-1133, 16-1134.

7-8-2403. Effect of conveyance of land to United States. The execution by the board of county commissioners of a deed of conveyance to the United States of any county land conveyed under this part shall operate to discharge and cancel all tax levies, tax liens, and special assessments of every sort and kind against such land and to convey all of the county's title to such lands at the time of the execution of said deed.

History: En. Sec. 4, Ch. 150, L. 1935; re-en. Sec. 4487.5, R.C.M. 1935; R.C.M. 1947, 16-1135(part).

Part 25

Classification and Alternative Management of County Lands

7-8-2501. Purposes of part. The purposes of this part are:

(1) to authorize a board of county commissioners to establish criteria for the classification of unsold tax-deed lands and other county-owned lands, however acquired, and to classify such lands for retention or disposal in accordance with such criteria so that county-owned lands shall be used in the best interests of the county and for the public benefit and welfare;

(2) to encourage the application of a multiple use principle in the utilization and administration of such lands so that the administration of lands classified for retention can be coordinated with land use planning, zoning, grazing and agricultural land improvement, fish and wildlife habitat improvement and enhancement, recreation, access to other intermingled or adjacent multiple use areas, and for any other appropriate uses which are in the best interests of the county or which will advance the public benefit and welfare; and

(3) to grant sufficient powers to the board to enable the board to achieve the foregoing purposes.

History: En. 84-4190.1 by Sec. 1, Ch. 540, L. 1975; R.C.M. 1947, 84-4190.1.

7-8-2502. Application of part. (1) Any lands offered for sale by the county commissioners of any county under 7-8-2301 and not sold at such sale, any lands concerning which the preferential right to purchase has been terminated and barred under the provisions of 7-8-2303, and any other lands owned by the county, however acquired, may, in the discretion and at the election of the board, be administered by the board under this part.

(2) The board may in its discretion elect to exercise all or any of the powers and authority granted to it by this part, and to the extent it so elects, the provisions of this part shall be controlling and shall supersede all conflicting provisions of other laws.

(3) The sale, exchange, lease, or issuance of licenses and permits of county lands as provided in this part shall extend only to those lands not necessary to the conduct of the county's business.

History: (1), (2)En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; Sec. 84-4192.1, R.C.M. 1947; (3)En. 84-4192.2 by Sec. 4, Ch. 540, L. 1975; Sec. 84-4192.2, R.C.M. 1947; R.C.M. 1947, 84-4192.1(part), 84-4192.2(part).

7-8-2503. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of county commissioners.

(2) "Multiple use" means:

(a) the management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the county;

(b) the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;

(c) the use of some land for less than all of the resources;

(d) the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land and with consideration being given to the relative values of the various resources and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output; and

(e) the use of said lands, where possible, to afford access in multiple use areas to federal and state lands.

History: En. 84-4190.2 by Sec. 2, Ch. 540, L. 1975; R.C.M. 1947, 84-4190.2.

7-8-2504. Classification of county lands. The board may:

(1) establish criteria for the classification of the lands referred to in 7-8-2502(1);

(2) classify such lands, surface and subsurface, for retention or disposal and for such purposes and uses as the board may determine are in the best interests of the county and for the public benefit and welfare, and in so doing, the board shall consider the multiple use potential of said lands and the potential of said lands as access to other intermingled or adjacent multiple use lands or areas.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(1)(a), (b).

7-8-2505. Rules for administration of county lands. The board may promulgate rules for the administration of such lands.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(1)(i).

7-8-2506. Advisory committee. The board may appoint not less than three or more than five residents of the county to act as an advisory committee to the board in implementing the provisions of this part. The duties of the advisory committee are to be established by the board. The board may provide for the payment of expenses incurred by the advisory committee in the carrying out of their duties.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(7).

7-8-2507. Land management alternatives. The board may:

(1) (a) grant permits or licenses to use the lands in such manner as the board may determine and in the best interests of the county and for the public benefit and welfare; and

(b) fix the terms, conditions, and price of such permits or licenses;

(2) enter into cooperative use agreements with individuals, groups of individuals, corporations, associations, cooperative state grazing districts, the state of Montana, the United States of America, and any state or federal subdivision, department, bureau, commission, or agency, including but not limited to the Montana department of fish, wildlife, and parks, the bureau of land management, conservation districts, and the Montana department of state lands;

(3) trade or exchange such lands with individuals or other governmental agencies, state or federal, such trades or exchanges to be made pursuant to terms, conditions, and procedures adopted by the board;

(4) (a) grant leases of the lands for such purposes and uses as the board may determine are in the best interests of the county, including the exploration and development of oil, gas, and other minerals; and

(b) fix the terms and conditions of such leases and the consideration to be paid by any lessee; and

(5) sell such lands or any part thereof pursuant to the procedures provided in this part.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part); amd. Sec. 2, Ch. 218, L. 1979.**

7-8-2508. Details relating to leases, permits, and licenses. (1) A lease of lands under this part shall not be made for a consideration less than an amount equal to the taxes these lands would have levied upon them if they were private lands.

(2) Leases, permits, and licenses shall not extend for a period longer than 10 years, except that oil, gas, and other mineral leases may be for a term of 10 years and as long thereafter as oil, gas, or other minerals are produced in commercial quantities. However, the board may provide for the renewal of such leases, permits, and licenses.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).**

7-8-2509. Improvements on leaseholds. (1) The board may authorize a lessee to place upon the lands improvements directly related to conservation of the land or necessary for proper utilization of the land for the purposes for which it is leased.

(2) (a) Whenever another person becomes the lessee of such land, such other persons shall pay to the former lessee the reasonable value of such improvements at the time the new lessee takes possession of such lands. The former lessee may, at the former lessee's option, remove or dispose of the movable improvements, but the same must be removed within 60 days from the date of the expiration of the lease. If not so removed, then all such improvements shall become the property of the county unless the board for good cause grants additional time for the removal thereof. Before a lease is issued to the new lessee, the new lessee shall show that the former lessee has been paid the value of the improvements as agreed upon by them or as fixed and determined as herein provided or that the former lessee has elected to remove the improvements.

(b) In case the former lessee and the new lessee are unable to agree on the reasonable value of such improvements, then such value shall be ascertained by three arbitrators. One of the arbitrators shall be appointed by the former lessee, one by the new lessee, and the third by the two arbitrators so appointed. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the former lessee and the new lessee. The value of the improvements so ascertained and fixed by the arbitrators shall be binding on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, the dissatisfied party may, within 10 days of being notified of the arbitrators' decision, appeal from that decision to the board. The decision of the board shall be final. Any costs incurred by the board in reexamining the decision of the arbitrators shall be borne by the former lessee and the new lessee in such proportions as the board may determine.

(3) The provisions of this section shall apply to the holders of permits or licenses for the use of county lands.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(3), (4).**

7-8-2510. Special provisions relating to oil and gas development. (1) Subject to the provisions of subsection (2), when considered in the best interests of the county, the board may:

(a) enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and for the apportionment of oil or gas royalties or both on acreage or other equitable basis; and

(b) modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation.

(2) Such agreements shall not change the percentages of royalties to be paid to the county from the percentages as fixed in its leases.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(8).

7-8-2511. Procedure for sale of county lands. (1) The board shall make an order for public auction of any lands classified for sale. Such sale shall be held at the front door of the county courthouse.

(2) Notice of the sale shall be given by publishing a notice in a newspaper published in the county once a week for 3 consecutive weeks preceding the date fixed for the sale. The first publication of the notice shall be made not more than 30 days prior to the sale date. If there is no newspaper published in the county, the notice shall be given by posting copies at three of the most public places in the county at least 20 days but not more than 30 days preceding the sale date. The notices shall describe the land to be sold and the appraised value thereof.

(3) No sale may be made for less than the appraised value of the land, as fixed by the board. The sale shall be for cash or on such terms as the board may approve provided at least 20% of the purchase price shall be paid in cash.

(4) The lessee, permittee, or licensee of any of the lands then subject to a lease, permit, or license shall have a preference to purchase the lands at an amount equal to that bid by the highest bidder at the sale.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(5).

7-8-2512. Procedure to exchange county lands. (1) Any of the lands classified for exchange by the board may be exchanged for any other lands pursuant to such procedures as the board may adopt. Any procedures adopted by the board for the exchange of land must include public notice as provided under 7-8-2511 and opportunity for public hearing on the proposed exchange.

(2) All such exchanges must be for equivalent value. If the lands sought to be exchanged are not of equivalent value, any difference may be equalized by a cash payment.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(6).

7-8-2513. Appraisal of land required. (1) The county commissioners shall, before they sell, exchange, or lease lands under the provisions of this part, cause such lands to be appraised by a qualified, independent person or persons, who may be but are not required to be an agent of the department of revenue, to determine the value of such lands for the purpose of such sale, exchange, or lease.

(2) For the purposes of this section, a renewal of the lease shall be considered an initial lease if the renewal is for a term exceeding 5 years.

History: **En. 84-4192.2 by Sec. 4, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.2(part).**

7-8-2514. Reservations of interest by county. (1) When granting a lease for oil, gas, or other mineral exploration or development, the board may reserve to the county a royalty interest as fixed by agreement between the board and the lessee.

(2) In trading, exchanging, or selling such lands, the board may make such reservations in favor of the county as the board considers proper, including but not limited to reserving to the county of any or all oil, gas, or other mineral or royalty interests; sand, gravel, clay, or other material; rights-of-way or easements for roads, utility lines, and other purposes or uses.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).**

7-8-2515. Apportionment and distribution of revenues from land. All proceeds from any use or disposition of lands pursuant to the terms of this part shall be apportioned and distributed according to the provisions of 7-8-2306.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).**

Part 26

County Forests

7-8-2601. Protection of forests. The board of county commissioners of any county may provide money for the purposes of forest protection, improvement, and management.

History: **En. Sec. 105, Ch. 147, L. 1909; re-en. Sec. 4470, R.C.M. 1921; re-en. Sec. 4470, R.C.M. 1935; R.C.M. 1947, 16-1104.**

7-8-2602. Authorization to create county forests. (1) The board of county commissioners of any county in Montana is hereby authorized to create county forests from any lands in such county which:

(a) are principally valuable for the timber thereon or for the growing of timber; and

(b) have been acquired by such county by tax deed and have been offered for sale at public auction and not sold or have been acquired by such county by exchange for lands acquired by tax deed.

(2) Such county forests shall be established by resolution of the board and may be discontinued by resolution of said board.

History: **En. Sec. 1, Ch. 70, L. 1945; R.C.M. 1947, 28-501.**

7-8-2603. Exchange of tax-deed lands for timber lands. After any lands acquired by the county by tax deed have been offered for sale at public auction and not sold, the board of county commissioners may exchange such lands for other lands which are principally valuable for the timber thereon or for the growing of timber if, in the opinion of such board, it is in the best interests of such county to acquire such other lands for the purpose of creating county forests or for the purpose of consolidating such lands with then-existing county forests.

History: **En. Sec. 2, Ch. 70, L. 1945; R.C.M. 1947, 28-502.**

7-8-2604. Procedure for sale of timber or other crops. (1) Subject to the requirements of subsection (2), the board of county commissioners may sell the timber crop and other crops of county forests under such rules as it may establish. The board may reject any or all bids, or it may award the sale to the highest responsible bidder.

(2) A notice of any proposed sale of timber in excess of 100,000 feet board measure shall be advertised at least once in a newspaper published in the county at least 30 days prior to the closing of bids as specified in said notice. The board shall receive sealed bids up to the hour of the closing of bids.

History: **En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).**

7-8-2605. Formal sale agreement. (1) Upon award of sale, the purchaser shall execute a formal agreement.

(2) The formal agreement shall:

(a) describe the area on which the timber is to be cut, the approximate amount to be cut by species, and the rate for each product of each species;

(b) stipulate that all timber shall be paid for in advance of cutting;

(c) fix a date for termination of the agreement;

(d) define rules of silviculture, cutting, utilization, scaling, and slash disposal; and

(e) incorporate such other rules as in the discretion of the board of county commissioners are essential to the perpetuation of the county forests.

History: **En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).**

7-8-2606. Bond to insure performance of agreement. As a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient securities, to the county in an amount equal to at least 20% of the estimated value of the timber sold.

History: **En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).**

7-8-2607. Procedure upon breach of agreement. Upon breach of any timber sale agreement, the board of county commissioners is authorized to suspend cutting or removal of the timber and, upon advice and counsel of the county attorney, to take such steps as are deemed by it necessary to adjust the breach or to liquidate the county's claim for damages or to submit the case to the county attorney for collection on the bond.

History: **En. Sec. 4, Ch. 70, L. 1945; R.C.M. 1947, 28-504.**

7-8-2608. Permits for domestic use of dead and down timber. Permits may be issued free of charge to residents and settlers of the county for dead, down, or inferior timber for fuel and domestic purposes, in such quantities and under such restrictions and regulations as the board of county commissioners may approve.

History: **En. Sec. 5, Ch. 70, L. 1945; R.C.M. 1947, 28-505(part).**

7-8-2609. Permits for small commercial timber harvest. Permits may be issued to citizens of Montana for commercial purposes at commercial rates without advertising, under such restrictions and rules as the board of county commissioners may approve, for timber in quantities of 100,000 feet board measure or less. Repeated permits of this kind shall not be issued to avoid advertising and the consequent competition secured thereby.

History: **En. Sec. 5, Ch. 70, L. 1945; R.C.M. 1947, 28-505(part).**

7-8-2610. Distribution of proceeds of timber sales. The proceeds of every such sale or of the issuance of any such permit shall be paid over to the county treasurer who shall apportion and distribute the same in the following manner:

(1) The proceeds of each sale up to the amount of $10 shall be credited to the county general fund to reimburse such for expenditures made therefrom in connection with the holding of such sale or the issuance of such permit.

(2) If there shall be any amount remaining of such proceeds and such remainder is in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty and interest, then so much of such remaining proceeds shall be credited to each fund or purpose as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county.

(3) If there shall be any amount remaining of such proceeds and such remainder is less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes.

History: **En. Sec. 6, Ch. 70, L. 1945; R.C.M. 1947, 28-506.**

7-8-2611. Construction of part. Nothing in this part shall be construed as repealing part 23 of chapter 8 or Title 76, chapter 13, parts 1 and 2.

History: **En. Sec. 7, Ch. 70, L. 1945; R.C.M. 1947, 28-507.**

Part 27

County Land Advisory Boards

7-8-2701. State policy for resource management. It is hereby declared to be the policy of the state of Montana:

(1) to promote the conservation of the natural resources of the state;

(2) to provide for the conservation, protection, and development of forage plants and for the beneficial utilization thereof for grazing by livestock, under such regulations as may be considered necessary;

(3) to put into crop production only such lands as are properly fitted therefor;

(4) to encourage the storage and conservation of water for livestock and irrigation;

(5) to place the farming and livestock industries upon a permanent and solid foundation;

(6) to extend preference in sales and leases of lands to resident farmers, stockmen, and taxpayers;

(7) to gradually restore to private ownership the immense areas of lands which have passed into county ownership because of tax delinquencies.

History: **En. Sec. 5, Ch. 67, L. 1933; re-en. Sec. 4573.5, R.C.M. 1935; R.C.M. 1947, 16-1505.**

7-8-2702. Definitions. (1) In this part, the term "board" shall mean the county land advisory board.

(2) In this part, the term "lands" shall mean all lands now owned by the respective counties which have been acquired by the counties through tax deed proceedings and any lands to be hereafter acquired by the same means and all lands acquired by the respective counties by deed, exchange, or in any manner whatsoever, excepting, however, such lands as are owned or may be acquired for the regular conduct of county affairs.

History: **En. Sec. 2, Ch. 67, L. 1933; re-en. Sec. 4573.2, R.C.M. 1935; R.C.M. 1947, 16-1502.**

7-8-2703. Creation of county land advisory boards. (1) There is hereby created in each county a department of county government of the state of Montana, to be known and designated as "the county land advisory board".

(2) The general purposes of this department shall be to cooperate with the board of county commissioners of each county in administering lands belonging to the respective counties.

History: **En. Sec. 1, Ch. 67, L. 1933; re-en. Sec. 4573.1, R.C.M. 1935; R.C.M. 1947, 16-1501.**

7-8-2704. Membership of land advisory board. The board of each county shall consist of five residents of the county to be appointed by the judge of the district court.

History: **En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part); amd. Sec. 12, Ch. 311, L. 1979.**

7-8-2705. Term of office of board members. (1) The citizen members first appointed pursuant to 7-8-2704 serve the following terms:

(a) two for a 2-year term;

(b) two for a 4-year term; and

(c) one for a 6-year term.

(2) On the expiration of the terms of the initial appointees, the succeeding members shall be appointed for the term of 6 years.

History: **En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part); amd. Sec. 13, Ch. 311, L. 1979.**

7-8-2706. Compensation of board members. The members shall serve without pay.

History: **En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part).**

7-8-2707. Organization of board — conduct of business. (1) The board shall, from its membership, select a chairman. The county clerk shall be the clerk of said board.

(2) The board shall hold regular meetings on the first Wednesday following the first Monday of each month and may hold meetings whenever

deemed necessary upon call of the chairman or a majority of the members. Three members of the board shall constitute a quorum for the transaction of business. The board may adopt whatever rules it deems proper for the conduct of its meetings.

(3) The county clerk, as clerk of the advisory board, shall keep the minutes of all meetings thereof and be custodian of all its records. It shall be the duty of the board to keep a record of the minutes of all meetings thereof in a suitable book, provided by the board of county commissioners for that purpose, and to preserve all important documents, maps, plats, and papers.

History: En. Sec. 4, Ch. 67, L. 1933; re-en. Sec. 4573.4, R.C.M. 1935; R.C.M. 1947, 16-1504.

7-8-2708. Function of land advisory board. (1) The board shall advise boards of county commissioners in the direction, control, care, management, appraisal, lease, sale, exchange, and disposition of all lands, when so requested by said board of county commissioners.

(2) The board may recommend the examination, classification, and appraisal of such lands as in its opinion have not previously been properly examined, classified, and appraised.

(3) The board may be called upon by boards of county commissioners to assist in making exchanges of lands with other owners.

History: (1)En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; Sec. 16-1503, R.C.M. 1947; (2)En. Sec. 6, Ch. 67, L. 1933; re-en. Sec. 4573.6, R.C.M. 1935; Sec. 16-1506, R.C.M. 1947; (3)En. Sec. 9, Ch. 67, L. 1933; re-en. Sec. 4573.9, R.C.M. 1935; Sec. 16-1509, R.C.M. 1947; R.C.M. 1947, 16-1503(part), 16-1506, 16-1509.

7-8-2709. Grazing and agricultural uses of county lands. (1) The board may cooperate with boards of county commissioners in establishing grazing districts or entering into agreements with other landowners for the establishment of grazing districts whereby county lands may be leased either on a per-head or per-acre basis.

(2) The board may act in an advisory capacity in fixing the fees, terms, and conditions of grazing and agricultural leases.

History: (1)En. Sec. 7, Ch. 67, L. 1933; re-en. Sec. 4573.7, R.C.M. 1935; Sec. 16-1507, R.C.M. 1947; (2)En. Sec. 8, Ch. 67, L. 1933; re-en. Sec. 4573.8, R.C.M. 1947; Sec. 16-1508, R.C.M. 1947; R.C.M. 1947, 16-1507, 16-1508.

Parts 28 through 40 reserved

Part 41

Municipal Buildings

7-8-4101. Construction, lease, and management of municipal buildings. The city or town council has power to build or hire all necessary buildings for the use of the city or town and to heat and light the same.

History: En. Subd. 5, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.4, R.C.M. 1935; R.C.M. 1947, 11-905.

Part 42

Disposal and Lease of Municipal Property

7-8-4201. Disposal or lease of municipal property. (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, or lease any property belonging to the city or town.

(2) (a) Such lease or transfer shall be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) If the property is held in trust for a specific purpose, the sale or lease thereof must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose.

(3) Nothing contained herein may be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city heretofore acquired for parks within the limitations prescribed by 7-16-4223.

History: En. Subd. 62, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.61, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1937; R.C.M. 1947, 11-964; amd. Sec. 14, Ch. 311, L. 1979.

CHAPTERS 9 AND 10

RESERVED

CHAPTER 11

GENERAL PROVISIONS RELATED TO SERVICES

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Part 1

Interlocal Agreements

7-11-101. Short title. This part shall be known and cited as the "Interlocal Cooperation Act".
History: En. Sec. 2, Ch. 82, L. 1967; R.C.M. 1947, 16-4902.

7-11-102. Purpose. It is the purpose of this part to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.
History: En. Sec. 1, Ch. 82, L. 1967; R.C.M. 1947, 16-4901.

7-11-103. Definition. For the purposes of this part, the term "public agency" shall mean any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.
History: En. Sec. 3, Ch. 82, L. 1967; R.C.M. 1947, 16-4903.

7-11-104. Authorization to create interlocal agreements. Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform. Such contract shall be authorized and approved by the governing body of each party to said contract. Such contract shall set forth fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(part).

7-11-105. Detailed contents of interlocal agreements. The contract authorized by 7-11-104 shall specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created thereby;

(3) the purpose or purposes of said interlocal contract;

(4) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget therefor;

(5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on said joint board;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;

(8) any other necessary and proper matters.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(1) thru (8).

7-11-106. Submission of agreement to attorney general. (1) Every agreement made hereunder shall, prior to and as a condition precedent to its performance, be submitted to the attorney general, who shall determine whether the agreement is in proper form and compatible with the laws of Montana.

(2) The attorney general shall approve any agreement submitted to him hereunder unless he shall find it does not meet the conditions set forth herein and shall detail, in writing addressed to the governing bodies of the public agencies concerned, the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within 30 days of its submission shall constitute approval thereof.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(9).

7-11-107. Filing of interlocal agreement. Within 10 days after the approval by the attorney general and prior to commencement of its performance, said interlocal contract made pursuant to this part shall be filed with:

(1) the county clerk and recorder of the county or counties where said political agencies are situated; and

(2) the secretary of state.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(10).

7-11-108. Authorization to appropriate funds for purpose of interlocal agreement. Any public agency entering into an interlocal contract pursuant to this part may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative board created for the purpose of performance of said contract and may provide such personnel or services therefor as may be within its legal power to furnish.

History: En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(11).

Part 2

Interlocal Cooperation Commission

7-11-201. Statement of policy. It is hereby declared to be the public policy of Montana to provide for the residents of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

History: En. Sec. 1, Ch. 129, L. 1969; R.C.M. 1947, 11-4401(1).

7-11-202. Purpose. It is the purpose of this part to provide a method whereby the residents of local areas in Montana may propose local solutions to the common problems referred to in 7-11-201 in order that proper growth and development of the state may be assured and the health and welfare of the people therein secured.

History: En. Sec. 1, Ch. 129, L. 1969; R.C.M. 1947, 11-4401(2).

7-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means an interlocal cooperation commission established pursuant to 7-11-204.

(2) "Principal city" means the city having the largest population in the county under consideration according to the latest federal decennial census.

(3) "Unit of local government" means a county, city, or town.

History: En. Sec. 2, Ch. 129, L. 1969; R.C.M. 1947, 11-4402.

7-11-204. Authorization for establishment of interlocal cooperation commissions. An interlocal cooperation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal cooperation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities, and towns having any jurisdiction in the county under consideration. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the clerk and recorder of the county, and an interlocal cooperation commission shall be deemed to be authorized.

(2) (a) A petition requesting the establishment of an interlocal cooperation commission shall be signed by at least 10% of the qualified voters within the county registered for the preceding general election and shall be filed with the clerk and recorder of the county.

(b) Upon receipt of such a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures thereon. Within 30 days following receipt of such petition, the clerk and recorder shall transmit the same to the board of county commissioners and to the governing bodies of all cities and towns having any jurisdiction in the county, together with his certificate as to the sufficiency thereof, and an interlocal cooperation commission shall be deemed to be authorized.

History: **En. Sec. 3, Ch. 129, L. 1969; R.C.M. 1947, 11-4403(part).**

7-11-205. Limitation on number of interlocal cooperation commissions. Only one commission may be established in a county at any one time.

History: **En. Sec. 3, Ch. 129, L. 1969; R.C.M. 1947, 11-4403(part).**

7-11-206. Term of commission. All commissions shall terminate 5 years from the date of their establishment. However, a commission, upon completion of its duties, may terminate earlier by a vote (favorable to such earlier termination) of three-fourths of the members.

History: **En. Sec. 16, Ch. 129, L. 1969; amd. Sec. 2, Ch. 70, L. 1971; R.C.M. 1947, 11-4416.**

7-11-207. Composition of commission. Any interlocal cooperation commission established pursuant to this part shall consist of members to be selected as follows:

(1) four members selected by the county commissioners;

(2) four members appointed by the mayor of the principal city and confirmed by the governing body of the city;

(3) one member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town;

(4) one member, who shall be chairman of the interlocal cooperation commission, selected by the other members of the commission at their initial meeting.

History: **En. Sec. 4, Ch. 129, L. 1969; R.C.M. 1947, 11-4404(1).**

7-11-208. Qualifications of members of commission. (1) Each member shall reside, at the time of his appointment, within the county if selected by the board of county commissioners or within the city or town by which appointed.

(2) No member shall be an official or employee of any unit of local government.

History: **En. Sec. 4, Ch. 129, L. 1969; R.C.M. 1947, 11-4404(2), (3).**

7-11-209. Time of appointment. The members of the interlocal cooperation commission shall be appointed within 60 days after the commission is authorized.

History: **En. Sec. 5, Ch. 129, L. 1969; R.C.M. 1947, 11-4405.**

7-11-210. Vacancies. In case of a vacancy for any cause, a new member shall be appointed in the same manner as the member he replaces.

History: **En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(1).**

7-11-211. Compensation for members of commission. Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

History: **En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(2).**

7-11-212. Organization of commission — meetings. (1) Not later than 80 days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners.

(2) At the first meeting of the commission, one of the members appointed by the board of county commissioners shall be designated by that body to serve as temporary chairman. As its first official act, the commission shall select a chairman from outside its own membership.

(3) Further meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the members of the commission.

History: **En. Sec. 6, Ch. 129, L. 1969; R.C.M. 1947, 11-4406.**

7-11-213. Conduct of business. (1) All meetings of the commission shall be open to the public.

(2) A majority of the members of the commission shall constitute a quorum for the transaction of business.

(3) Each member shall have one vote. A favorable vote by a majority of the entire commission shall be necessary for any action permitted by 7-11-230, but other actions may be by a majority of those present and voting.

(4) Each commission may adopt such other rules for its proceedings as it deems desirable.

History: **En. Sec. 7, Ch. 129, L. 1969; R.C.M. 1947, 11-4407(3) thru (5).**

7-11-214 through 7-11-220 reserved.

7-11-221. Powers and duties of commission. A commission shall have the following powers and duties:

(1) to contract and cooperate with other public or private agencies, as it considers necessary for the rendition and affording of such services, facilities, studies, and reports to the commission as will best assist it to carry out the purposes for which the commission was established;

(2) to consult and retain such experts and to employ such executive, clerical, and other staff as, in the commission's judgment, may be necessary;

(3) to accept and expend money from any public or private source, including the federal government;

(4) to do any and all other things as are consistent with and reasonably required to perform its functions under this part.

History: **En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part).**

7-11-222. Management of commission finances. All money received by the commission shall be deposited with the county treasurer in the county. The county treasurer is authorized to disburse funds of the commission on its order.

History: **En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part).**

7-11-223. Authorization to make appropriations for commission. The units of local government within the county under consideration and the county may appropriate funds for the necessary expenses of the commission.

History: **En. Sec. 15, Ch. 129, L. 1969; R.C.M. 1947, 11-4415.**

7-11-224. Preparation of comprehensive program. (1) The commission shall prepare a comprehensive program for the furnishing of local governmental services, on both countywide and urban area bases, as it deems desirable.

(2) Within 3 years after the date of its organization, the commission shall complete the preparation of its proposals for the provision of both urban area services and countywide services and shall provide for adequate publication and explanation of its program.

History: **(1)En. Sec. 9, Ch. 129, L. 1969; Sec. 11-4409, R.C.M. 1947; (2)En. Sec. 12, Ch. 129, L. 1969; amd. Sec. 1, Ch. 70, L. 1971; Sec. 11-4412, R.C.M. 1947; R.C.M. 1947, 11-4409, 11-4412(part).**

7-11-225. Considerations in preparation of proposals. (1) A commission shall consider the various areas included within the county, including areas incorporated as municipalities, unincorporated areas essentially urban in nature, unincorporated areas with both urban and rural characteristics, and predominantly rural areas.

(2) In the formation of its proposals, which can include arrangements for countywide governmental services and urban area services in both incorporated and unincorporated areas, a commission shall study and take into consideration:

(a) the existing land use within the county, including the location of highways and natural geographic barriers to and routes for transportation, making use wherever possible of comprehensive land use plans prepared for the area by organized planning boards or other reliable surveys;

(b) the need for organized local governmental services, the present cost and adequacy of local governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of alternative courses of action on the cost and adequacy of services and controls in the areas concerned and in adjacent areas;

(c) population density, distribution, and growth; per capita assessed valuation; and the likelihood of significant growth in the areas concerned and in adjacent incorporated and unincorporated areas;

(d) the boundaries of existing units of local government;

(e) maintenance of citizen access to, control of, and participation in local government;

(f) such other matters as might affect provision of local governmental services on an equitable basis and provide more efficient and economical administration thereof.

History: **En. Sec. 8, Ch. 129, L. 1969; R.C.M. 1947, 11-4408.**

7-11-226. Consideration of property and debts. The commission shall:

(1) determine the value and amount of all property used in performing any local governmental service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected by its comprehensive program for both urban area services and countywide services; and

(2) determine and provide in its proposed program for assumption or equitable adjustment of such property and debts of each unit of local government affected.

History: **En. Sec. 11, Ch. 129, L. 1969; R.C.M. 1947, 11-4411.**

7-11-227. Furnishing of information to commission. Upon request of the chairman of the commission, all state agencies, all counties and other units of local government, and the officers and employees thereof shall furnish the commission such information as may be necessary for carrying out its functions and which may be available to or procurable by such agencies or units of government.

History: En. Sec. 14, Ch. 129, L. 1969; R.C.M. 1947, 11-4414(part).

7-11-228. Public hearings on proposed program — notice. Notice of hearings shall be published once each week for at least 2 weeks preceding a hearing, in at least one newspaper of general circulation in the county. The notice shall state the time and place of the hearing.

History: En. Sec. 12, Ch. 129, L. 1969; amd. Sec. 1, Ch. 70, L. 1971; R.C.M. 1947, 11-4412(part).

7-11-229. Recommendations to implement program. In preparing its comprehensive program for furnishing local governmental services, a commission may recommend one or more of the following courses of action:

(1) performance of one or more services by any existing unit of local government;

(2) consolidation of specified services by transfer of functions between local units of government, by creation of joint administrative agencies, or by contractual agreements;

(3) consolidation of any existing special service district with one or more other special service districts to perform all of the services provided by any of them;

(4) creation of a new special service district to perform one or more services, with provision for the dissolution of any existing special service districts performing like service or services within the proposed boundaries of such new district;

(5) annexation of unincorporated territory to any existing city or town;

(6) consolidation of any existing cities and towns with any other existing cities and towns;

(7) consolidation of any cities and towns with the county in which they lie;

(8) creation of a permanent council of governments consisting of members of the governing bodies of the units of local government within and including the county concerned;

(9) creation of a unified government for the entire county, vested with:

(a) any and all powers which cities are or may hereafter be authorized or required to exercise under the constitution and general laws of Montana; and

(b) any and all powers which counties are or may hereafter be authorized or required to exercise under the constitution and general laws of Montana;

(10) any other change it considers desirable involving creation, dissolution, or consolidation of units of local government in the county under consideration or involving alteration of their boundaries, powers, and responsibilities, consistent with provisions of the constitution of Montana.

History: En. Sec. 10, Ch. 129, L. 1969; R.C.M. 1947, 11-4410.

7-11-230. Procedure for making recommendations. After public hearing, the commission shall submit proposals contained in its comprehensive program for action as follows:

(1) If the comprehensive plan of the commission includes the creation of or any change, alteration, consolidation, dissolution, or annexation with respect to any unit of local government or special district a procedure for which is provided by law upon petition by the people and an election, the commission shall make public its proposal or proposals to the people in the area or areas affected.

(2) If the comprehensive plan includes the consolidation or transfer of the administrative and financial responsibilities for services between or among municipalities and counties, the commission shall make public its recommendation to the electorate of the local governments for referenda as provided for in 7-11-302.

(3) If the comprehensive plan includes any change, alteration, interlocal agreement, consolidation, dissolution, or annexation with respect to any unit of local government or special district which can be carried into effect under existing law by action of the governing bodies of the units affected, the commission shall recommend the necessary action to the governing body or bodies of the units of government concerned.

(4) If the comprehensive plan includes the creation of or any change, alteration, consolidation, dissolution, or annexation with respect to any unit of local government or special district which necessitates enabling legislation or amendments to the general laws or constitution of Montana, the commission shall make such recommendation or recommendations to the ensuing legislature.

History: **En. Sec. 13, Ch. 129, L. 1969; R.C.M. 1947, 11-4413; amd. Sec. 11, Ch. 314, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted subsection (2).

Severability: Section 12, Ch. 314, L. 1981, was a severability section.

Part 3

Consolidation and Transfer of Services

Part Compiler's Comments

1981 Title: The title to Ch. 314, L. 1981, read: "An act to provide procedures for the electors of local governments to consolidate or transfer the administrative and financial responsibility for services between or among municipalities and counties; amending section 7-11-230, MCA."

Severability: Section 12, Ch. 314, L. 1981, was a severability section.

7-11-301. Purpose. (1) The purpose of this part is to provide procedures for the electors of local governments to consolidate or transfer the administrative and financial responsibility for services between or among municipalities and counties.

(2) Nothing in this part is to be construed as in any way affecting the authority of local governments to enter into interlocal agreements or contracts as provided by law.

History: **En. Sec. 1, Ch. 314, L. 1981.**

7-11-302. Consolidation and transfer of services. (1) A consolidation or transfer of services between or among municipalities may be proposed by a petition of the electors or on a recommendation of an interlocal cooperation commission as provided in 7-11-230.

(2) A petition or recommendation may propose to consolidate or transfer the administrative or financial responsibility or any administrative service,

activity, or undertaking that any of the local governments included in the proposed consolidation or transfer are authorized by law to perform.

(3) Notwithstanding the requirements of 7-32-101, a petition or recommendation may propose to consolidate or transfer any law enforcement administrative service, activity, or undertaking between or among local governments.

History: **En. Sec. 2, Ch. 314, L. 1981.**

7-11-303. Petition for consolidation or transfer of services. (1) A petition or recommendation for the consolidation or transfer of the administrative and financial responsibility for services between or among local governments may be presented to the governing bodies of the local governments affected by the consolidation or transfer.

(2) A petition must be signed by at least 15% of the electors registered at the last general election of the local governments affected by the proposed consolidation or transfer.

(3) Whenever the consolidation or transfer of a service between a county and municipality is proposed by petition, the petition must be signed by at least 15% of the electors residing in each municipality included in the service consolidation or transfer and 15% of the electors residing in the remainder of the county.

(4) Upon determination of the sufficiency of the petition or upon receipt of a recommendation of the interlocal cooperation commission, the governing body of each of the local governments affected by the proposed consolidation or transfer shall call an election on the transfer or consolidation as provided in 7-11-307.

History: **En. Sec. 3, Ch. 314, L. 1981.**

7-11-304. Service plan. (1) The petitioners or the interlocal cooperation commission shall prepare a service plan governing the service or activity proposed to be transferred or consolidated.

(2) The plan shall provide:

(a) the nature of service or function to be consolidated or transferred;

(b) the effective date of the proposed consolidation or transfer;

(c) the responsibility for administration of the service to be consolidated or transferred, including the succession of the performance of duties currently performed by an elected officer if the elective status of an office is affected;

(d) the manner in which affected employees currently engaged in the performance of the function will be transferred, reassigned, or otherwise treated;

(e) the manner in which real property, facilities, equipment, or other personal property required in the exercise of the function are to be transferred, sold, or otherwise disposed of;

(f) the method of financing, establishing, and maintaining a budget for the service; and

(g) other legal, financial, and administrative arrangements necessary to effect the transfer in an orderly and equitable manner.

(3) The service plan may include provisions for an administrator or joint board responsible for administering any joint or cooperative undertaking.

(4) The service plan shall be attached to the petition or to the interlocal cooperation commission's recommendation when it is submitted to the governing bodies affected by the service consolidation or transfer.

History: **En. Sec. 4, Ch. 314, L. 1981.**

7-11-305. Availability of petition or recommendation and service plan. (1) Sufficient copies of the petition or recommendation of the interlocal cooperation commission proposing a service consolidation or transfer and the service plan must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than 30 days prior to an election on the proposal if such an election is to be held.

(2) Each local government affected by the proposal may distribute copies of the service plan to its residents.

History: **En. Sec. 5, Ch. 314, L. 1981.**

7-11-306. Publication of summary and comparison. (1) A summary of the recommendations contained in a petition or recommendation and the service plan proposing the consolidation or transfer of a service or activity must be published at least twice in a newspaper of general circulation in each local government affected by the proposal. The publication must be made during the 2 weeks preceding the election.

(2) The summary must contain a description of the recommendations, a comparison of the existing and proposed methods of service delivery, and a list of locations where the full proposal may be seen or obtained.

(3) The cost of publication required by this section shall be shared by the affected local governments.

History: **En. Sec. 6, Ch. 314, L. 1981.**

7-11-307. Election on service consolidation or transfer. (1) The governing bodies of each local government affected by a proposed service consolidation or transfer shall jointly call a special election on the question of service consolidation or transfer, to be held within 120 days of the date of the filing of the petition under 7-11-303 or within 120 days of the receipt by the local government of the interlocal cooperation commission recommendation. The special election may be held in conjunction with any other election. The county election administrator shall prepare and print notices of the special election.

(2) The cost of the election shall be shared by the affected local governments in proportionate shares as agreed to by the governing bodies of the local governments.

History: **En. Sec. 7, Ch. 314, L. 1981.**

7-11-308. General ballot requirements. (1) The question of adopting a service consolidation or transfer shall be submitted to the electors of the local governments affected by the proposal in substantially the following form:

Shall the plan for (consolidation or transfer) of (insert name of service or function) services proposed in the (petition or recommendation of the interlocal cooperation commission) and service plan to the (insert the names of local government units) be adopted?

☐ YES.

☐ NO.

(2) If the question of adopting a service consolidation or transfer alters the elective status of any elected county official, it shall be submitted to the electors of the local governments affected by the proposal in substantially the following form:

☐ For adoption of (consolidation or transfer) of (insert name of service or function) proposed in the (petition or recommendation of the interlocal cooperation commission) and service plan to the (insert names of local government units) in which the office of (insert name of county office) is (insert description of changes in elective status).

☐ For existing service delivery arrangements.

(3) In any election involving the question of service consolidation or transfer, an affirmative vote of a simple majority of those voting on the question is required for adoption.

(4) If the electors disapprove the proposed service consolidation or transfer, each local government retains its existing service delivery method until changed or modified as provided by law.

(5) Except for nonsubstantive adjustments required to insure efficient and effective operations, a service consolidation or transfer effected by the procedures contained in this part may be amended or otherwise changed only in the same manner as required for its adoption.

History: En. Sec. 8, Ch. 314, L. 1981.

7-11-309. Effect of adoption of service consolidation or transfer. The adoption of a service consolidation or transfer does not affect the validity of any bond, debt, contract, collective bargaining agreement, obligation, or cause of action accrued or established by any affected local government prior to the consolidation or transfer.

History: En. Sec. 9, Ch. 314, L. 1981.

7-11-310. Judicial review. (1) Judicial review to determine the validity of the procedures used in adopting any service consolidation or transfer may be initiated by petition in district court of 10 or more registered electors of each local government affected by the consolidation or transfer brought within 60 days after the election adopting the service consolidation or transfer. If no petition is filed within that period, compliance with all the procedures required by 7-11-303 through 7-11-310 and the validity of the manner in which the service consolidation or transfer was approved is conclusively presumed.

(2) It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a service consolidation or transfer may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

History: En. Sec. 10, Ch. 314, L. 1981.

CHAPTER 12

IMPROVEMENT DISTRICTS

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Parts 1 through 20 reserved

Part 21

Rural Improvement Districts

7-12-2101. Definitions. (1) The term "board of county commissioners" includes any body or board which under the law is the legislative department of the government of the county.

(2) The word "blocks", shall mean such blocks, whether regular or irregular, as are bounded by main streets or partially by a boundary line of the city.

(3) The word "city" and the word "municipality", as used in this part, shall be understood and so construed as to include all corporations heretofore organized and now existing and hereafter organized for municipal purposes.

(4) The terms "clerk" and "county clerk", as used in this part, include any person or officer who shall be clerk of the board of county commissioners.

(5) The term "county treasurer", as used in this part, means and includes any person who, under whatever name or title, is the custodian of the funds of the county.

(6) The term "engineer", designated in the petition as used in this part, means the person, firm, or corporation whose name is designated and approved by the board of county commissioners as the engineer in the original petition asking for the improvement.

(7) The term "incidental expenses", as used in this part, shall include the compensation of the engineer selected as hereinbefore provided for work done by him, the cost of printing and advertising, as provided in this part, the expenses of making the assessment for any work authorized by this part.

(8) The term "main street" means such actually opened street or streets as bound a block.

(9) The words "paved" or "repaved", as used in this part, shall be held to mean and include pavement of stone, whether paving blocks or macadam; of bituminous rock or asphalt; or of wood, brick, or other material, whether patented or not, which the board of county commissioners by rule or resolution shall adopt.

(10) The term "quarter block", as used in this part as to irregular blocks, includes all lots or portions of lots having any frontage on either intersecting street halfway from such intersection to the next main street or when no main street intervenes, all the way to the boundary line of any city.

(11) The word "street", as used in this part, includes avenues, highways, lanes, alleys, crossings or intersections, courts, and places which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years next preceding.

(12) The term "street intersection", wherever used in this part, means that parcel of land at the point of juncture or crossing of intersecting streets, which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

(13) The words "work", "improved", and "improvements", as used in this part, shall include all work or the securing of property, by purchase or otherwise, mentioned in this part and also the construction, reconstruction, maintenance, and repair of all or any portion of said work.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part).

7-12-2102. Authorization to create rural improvement districts upon petition. (1) Whenever the public interest or convenience may require and upon the petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks, and such other special improvements as may be petitioned for.

(2) The board of county commissioners may upon compliance with subsection (1) order and create special improvement districts covering projects abutting the city limits and include properties inside the city where the rural improvement district abuts and benefits that property. Property owners

within the proposed district boundaries inside the city may be included in the rural special improvement district only if 60% of those property owners approve of the rural special improvement district. The property inside the city must be treated in a similar manner as to improvements, notices, and assessments as the property outside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the rural special improvement district prior to passing the resolution of intention or resolution creating the rural special improvement district. A copy of the resolution of intention and the resolution creating the rural special improvement district must be provided to the city clerk upon the passage of the respective resolutions.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1929; re-en. Sec. 4574, R.c.M. 1935; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969; R.C.M. 1947, 16-1601(part); amd. Sec. 1, Ch. 342, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

7-12-2103. Resolution of intention to create rural improvement district. (1) Before creating any special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the board of county commissioners shall pass a resolution of intention to do so.

(2) The resolution shall designate the number of such district, describe the boundaries thereof, state therein the general character of the improvements which are to be made, and designate the name of the engineer who is to have charge of the work and an approximate estimate of the cost thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R.C.M. 1921; re-en. Sec. 4575, R.C.M. 1935; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969; R.C.M. 1947, 16-1602(part).

7-12-2104. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it shall be sufficient to briefly describe the work or the assessment district or both and to refer to the resolution of intention for further particulars.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 6, Ch. 147, L. 1921; re-en. Sec. 4579, R.C.M. 1921; re-en. Sec. 4579, R.C.M. 1935; R.C.M. 1947, 16-1606.

7-12-2105. Notice of resolution of intention to create district — hearing. (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners must give notice of the passage of such resolution of intention.

(2) The notice must be published for 10 consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created. The board shall also cause a copy of such notice to be posted in three public places within the boundaries of such special improvement district. A copy of such notice shall be mailed to every person, firm, or corporation or the agent of such person, firm, or corporation owning real property within the proposed district listed

in his name upon the last completed assessment roll for state, county, and school district taxes, at his last known place of residence, upon the same day such notice is first published or posted.

(3) Such notice must describe the general character of the improvement or improvements so proposed to be made or acquired by purchase, state the estimated cost thereof, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of such improvements or the creation of such district. The notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R.C.M. 1921; re-en. Sec. 4575, R.C.M. 1935; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969; R.C.M. 1947, 16-1602(part).

7-12-2106. General provisions related to notice. (1) The notices, resolutions, orders, or other matters required to be published by the provisions of this part shall be published in a daily, semiweekly, or weekly newspaper, to be designated by the board of county commissioners, as often as the same is issued during the period specified for publication, and no other statute is applicable to publications herein provided for. In case there is no daily, semiweekly, or weekly newspaper printed or circulated in a county, then those notices, resolutions, orders, or other matters as are herein required to be published in a newspaper shall be posted, for the same length of time as required herein for publication in a daily, semiweekly, or weekly newspaper, in three of the most public places in each voting precinct except as otherwise specifically provided herein.

(2) Proof of the publication or posting of any notice is made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the poster of the notice.

(3) No publication of notice other than that provided for in this part is necessary to give validity to any of the proceedings provided therein.

(4) The word "twice", as used in this part, referring to the number of times notices, resolutions, orders, or other matters shall be published, means publication of the same in two entire issues of the newspaper, one being on one day and the other issue being on a subsequent day of the same or subsequent week.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(4); amd. Sec. 1, Ch. 251, L. 1979.

7-12-2107. Responsibility for posting and publication of notice. (1) Whenever any resolution, order, notice, or determination is required to be published or posted and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer in the county, it shall be the duty of the county clerk to post or procure the publication or posting thereof, as the case may be.

(2) No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or

procuring the publication or posting of any resolution, notice, order, or determination hereunder when the same is actually published or posted for the time herein required.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 28, Ch. 147, L. 1921; re-en. Sec. 4601, R.C.M. 1921; re-en. Sec. 4601, R.C.M. 1935; R.C.M. 1947, 16-1628.

7-12-2108. Extension of proposed district. Whenever a contemplated work or improvement, in the opinion of the board of county commissioners, is of more than local or ordinary public benefit or whenever, according to the estimates furnished by the county surveyor or an engineer approved by the board and designated in the petition, the total estimated cost and expenses thereof would exceed one-half of the total assessed value of the lots and lands assessed (if assessed upon the lots and lands fronting upon such proposed work or improvement according to the valuation fixed by the last assessment roll whereon it was assessed for taxes), the board may make the expense of such work chargeable upon the extended district, which may include other lots and lands not fronting on the improvement and which the board shall declare, in its resolution of intention, to be the district benefited by said work or improvement and to be assessed to pay the cost and expense thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 3, Ch. 147, L. 1921; re-en. Sec. 4576, R.C.M. 1921; re-en. Sec. 4576, R.C.M. 1935; R.C.M. 1947, 16-1603.

7-12-2109. Right to protest creation or extension of district. At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extending or creation of the district to be assessed, or both. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of its receipt by him.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part).

7-12-2110. Who considered owner. (1) The person owning the fee; the person to whom, on the day the action is commenced, appears the legal title to the lot and lands by deed duly recorded in the county recorder's office in each county; or the person in possession of lands, lots or portions of lots, or buildings under claim or exercising acts of ownership over the same for himself or as the executor, administrator, or guardian of the owner shall be regarded, treated, and deemed to be the "owner" for the purpose of this part, according to the intent and meaning of that word as used in this part.

(2) In case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed the possession of such owner.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(1).

7-12-2111. Hearing on protest. (1) At the next regular meeting of the board of county commissioners after the expiration of the time within which protest may be made, the board shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive. The board may adjourn said hearing from time to time.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the county shall be considered the same as other property in the district.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part).**

7-12-2112. Sufficient protest to bar proceedings — exception. (1) Except as provided in subsection (2), no further proceedings shall be taken for a period of 6 months from the date when said protest was received by the county clerk when:

(a) the protest is against the proposed work and the cost thereof is to be assessed upon the property fronting thereon and the board of county commissioners finds that such protest is made by the owners of more than 50% of the area fronting on the proposed work; or

(b) the protest is against the proposed work and the cost thereof is to be assessed upon the property within the extended district and the board finds that such protest is made by the owners of more than one-half of the area of the property to be assessed for such improvements.

(2) In case the improvements are the construction of sanitary sewers, the protests may be overruled by a unanimous vote of the board.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 4, Ch. 147, L. 1921; re-en. Sec. 4577, R.C.M. 1921; re-en. Sec. 4577, R.C.M. 1935; R.C.M. 1947, 16-1604(part).**

7-12-2113. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the special improvement district in accordance with the resolution of intention theretofore introduced and passed by the board.

(2) The board shall be deemed to have acquired jurisdiction to order improvements immediately upon the occurrence of the following conditions:

(a) when no protests have been delivered to the county clerk within 15 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest shall have been found by said board to be insufficient or shall have been overruled; or

(c) when a protest against the extending of the proposed district shall have been heard and denied.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 5, Ch. 147, L. 1921; re-en. Sec. 4578, R.C.M. 1921; re-en. Sec. 4578, R.C.M. 1935; R.C.M. 1947, 16-1605.**

7-12-2114. Area includable within district. A rural improvement district, as authorized by 7-12-2102, may include a part or all of any county or may include areas in more than one county.

History: **En. Sec. 1, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.1.**

7-12-2115. Adjournment of hearing. Whenever in proceedings hereunder a time and place for hearing by the board of county commissioners is fixed and from any cause, the hearing is not then and there held or regularly adjourned to a fixed time and place, the power and jurisdiction of the board in the premises shall not be thereby divested or lost, but the board may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least 5 days before the date of the hearing. Thereupon the board shall have power to act as in the first instance.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 27, Ch. 147, L. 1921; re-en. Sec. 4600, R.C.M. 1921; re-en. Sec. 4600, R.C.M. 1935; R.C.M. 1947, 16-1627.

7-12-2116. County surveyor as improvement district engineer. The county surveyor may be the engineer, as defined in 7-12-2101(6), for a rural improvement district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part).

7-12-2117. Record of expenses to be kept by engineer. It shall be the duty of the engineer selected as hereinbefore provided to keep an account in his office of all costs and expenses incurred in connection with every special improvement district and to certify the same to the county clerk.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part).

7-12-2118. Role of county clerk. It shall be the duty of the county clerk to prepare all necessary schedules and resolutions levying the taxes and assessments in such special improvement district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part).

7-12-2119. Manner of making demands for incidental expenses. All demands for incidental expenses in 7-12-2101(7) shall be presented to the county clerk by itemized bill, duly verified by oath of the demandant.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R.C.M. 1921; re-en. Sec. 4599, R.C.M. 1935; amd. Sec. 4, Ch. 134, L. 1961; R.C.M. 1947, 16-1626(part).

7-12-2120. Maintenance of improvements. (1) Whenever any sanitary or storm sewers, lights or light systems, waterworks plants, water systems, sidewalks, or any other special improvements petitioned for or created by the state or federal government have been made, built, constructed, erected, or accomplished as provided in this part, it is hereby made the duty of the board of county commissioners under whose jurisdiction the district was created or supervised or directed to adequately and suitably maintain and preserve said improvements and to fully keep the same in proper repair and operation, by contract or otherwise, in such way or manner as the board shall deem suitable and proper.

(2) The whole cost of maintaining, preserving, and repairing of said improvements in any improvement district shall be paid by assessing the entire district in the method provided for by 7-12-2108.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(1).

7-12-2121. Administration of multicounty district. (1) If a rural improvement district includes areas in more than one county, the board of county commissioners of each county in which any portion of the district is situated shall, upon creation of the district and at a joint session, appoint an initial board of three trustees to administer the affairs of the district.

(2) At the end of the term of a trustee, the board of county commissioners of the county represented by the trustee shall appoint a new trustee. In case of a vacancy by death, resignation, removal from the district, or otherwise, a trustee shall be appointed by the board of county commissioners of the county represented by the trustee to fill the vacancy.

(3) At least one trustee shall be appointed from each county within the district.

History: En. Secs. 2, 3, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.2, 16-1605.3(part); amd. Sec. 2, Ch. 251, L. 1979.

7-12-2122. Term of office of multicounty district trustee. (1) The trustees appointed upon the creation of such district shall serve staggered terms of 1, 2, and 3 years. Thereafter, each trustee serves a term of 3 years.

(2) A trustee holds office for the term of his appointment or until his successor is appointed and qualified.

History: En. Sec. 3, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.3(part); amd. Sec. 3, Ch. 251, L. 1979.

7-12-2123. Powers of multicounty district board of trustees. The board of trustees of a rural improvement district shall have all the powers and duties with respect to such district as the board of county commissioners has with respect to a district including the area of only one county.

History: En. Sec. 4, Ch. 62, L. 1963; R.C.M. 1947, 16-1605.4.

7-12-2124 and 7-12-2125 reserved.

7-12-2126. Transfer of management and control of district to city or town. (1) When a special improvement district has been created in accordance with the provisions of this part in any county of the state and the property contained therein subsequently becomes a part of the boundaries of an incorporated city or town, the board of county commissioners or the multicounty district trustees, as the case may be, may transfer the operation, control, and management of the district to a city or town, upon such terms and conditions as may be agreed upon.

(2) A city or town may accept the responsibility to operate and control such a district.

(3) An agreement for transfer of responsibilities from a county to a city or town must be properly executed in writing and must be approved by both

governing bodies. Until an agreement is effective, the board of county commissioners or the multicounty district trustees, as the case may be, shall retain operation, control, and management of the district. The date of transfer of operation, control, and management is the date the agreement is fully effective or the date of transfer specified in the agreement, whichever is later.

History: En. Sec. 1, Ch. 146, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 146, L. 1981 (HB 351), read: "An act to clarify the authority of municipal and county governing bodies and to provide for administration of rural special improvement districts when the property has become part of an incorporated city or town."

Codification Instruction: Section 2, Ch. 146, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 7, chapter 12, part 21, and the provisions of Title 7, chapter 12, part 21, apply to section 1."

7-12-2127 through 7-12-2130 reserved.

7-12-2131. Bids for district work. (1) The board of county commissioners may call for bids for proposals for several kinds or types of materials for any of the improvements proposed, reserving the right to select the kind of type or materials to be used in making any or all of said improvements after the bids or proposals therefor shall have been opened, examined, and declared.

(2) All proposals or bids offered shall be accompanied by bid security as provided for in Title 18, chapter 1, part 2. Such proposals or bids shall be delivered to the county clerk.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).

7-12-2132. Advertising for bids. A notice inviting proposals and referring to specifications on file with the engineer selected as hereinbefore provided shall be published at least twice in a daily, semiweekly, or weekly newspaper published and circulated nearest to the boundaries of the proposed improvement district. The paper shall be designated by the board of county commissioners for that purpose. A copy of said notice shall be posted in at least three public places within the boundaries of the proposed district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(1).

7-12-2133. Competitive bidding not required for purchase of existing improvement. If the proposed improvement consists of the purchase of an existing improvement, the board of county commissioners may in their discretion, after the creation of the special improvement district and after ordering the proposed improvement, enter into a contract for the purchase of said improvement, upon such terms as they deem just, without advertising for bids or proposals; provided, however, that the total purchase price shall not exceed the amount set forth in the notice required by 7-12-2105.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(6).

7-12-2134. Opening of bids. (1) The board of county commissioners shall, in open session, publicly open and examine and declare the bids.

(2) The time fixed for the opening of the bids shall not be less than 15 days from the time of the final publication of the notice required by 7-12-2132.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).

7-12-2135. Decision on award of contract. (1) The board of county commissioners may award the contract for such work or improvement to the lowest responsible bidder at the prices named in his bid and shall reject all proposals other than the lowest regular proposal or bid of any responsible bidder.

(2) The board:

(a) may reject any and all proposals or bids should it deem this for the public good;

(b) may also reject the bid of any party who has been delinquent or unfaithful in any former contract with the board.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(4).

7-12-2136. Procedure if all bids rejected or no bids received. If the bids are rejected or no bids are received, the board of county commissioners may within 6 months thereafter readvertise for proposals or bids for the performance of the work as in the first instance, without further proceedings, and thereafter proceed in the manner provided in 7-12-2131 through 7-12-2137.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).

7-12-2137. Procedure for dealing with bid securities. (1) If bids are rejected, the board of county commissioners shall thereupon return to the proper parties the bid securities accompanying the bids so rejected.

(2) The bid security accompanying said accepted proposal or bid shall be held by the county clerk until the contract for doing said work, as hereinafter provided, has been entered into, either by the lowest bidder or by the owners of over 50% of frontage, whereupon said bid security shall be returned to said bidder.

(3) If said bidder fails, neglects, or refuses to enter into the contract to perform said work and improvements as hereinafter provided, then the bid security accompanying his bid, in the amount therein mentioned, shall be declared to be forfeited to the board and shall be collected by it and paid into the general fund of the county.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R.C.M. 1921; re-en. Sec. 4580, R.C.M. 1935; amd. Sec. 3, Ch. 134, L. 1961; amd. Sec. 3, Ch. 220, L. 1975; R.C.M. 1947, 16-1607(part).

7-12-2138. Contractor's bond for successful completion of work. All contractors and contracting owners included shall, at the time of executing any contract for any work, execute a bond to the satisfaction and approval of the board of county commissioners, in the form and manner provided for in Title 18, chapter 2, part 2.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 9, Ch. 147, L. 1921; re-en. Sec. 4582, R.C.M. 1921; re-en. Sec. 4582, R.C.M. 1935; amd. Sec. 4, Ch. 220, L. 1975; R.C.M. 1947, 16-1609.

7-12-2139. Procedure if person entering contract defaults on work. (1) If the contractor who may have taken any contract does not complete the same within the time limited in the contract or within such further time as may be given him, the engineer selected as hereinbefore provided shall report such delinquency to the board of county commissioners.

(2) (a) The board may relet the unfinished portion of said work after pursuing the formalities prescribed in 7-12-2131 through 7-12-2137 for the letting of the whole in the first instance.

(b) The board shall have the right, in its option, to complete the contract and deduct any cost in excess of the contract price thereof from any money, bond, or warrant due such contractor. In the event there is no money, bond, or warrant due such contractor from which to deduct such cost, then the board shall have the right to sue such contractor and recover from him such costs.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 8, Ch. 147, L. 1921; re-en. Sec. 4581, R.C.M. 1921; re-en. Sec. 4581, R.C.M. 1935; R.C.M. 1947, 16-1608.

7-12-2140. Procedure for objection to proceedings. (1) At any time within 60 days from the date of the awarding of a contract, any owner or other person having any interest in any lot, tract, or plot of land liable to assessment who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous, or faulty or that his property will be damaged by the making of any of the improvements in the manner contemplated may file with the county clerk a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent his property will be damaged by the making of said improvements.

(2) Said notice shall state that it is made in pursuance of this section.

(3) All objections in any act or proceeding or in relation to the making of said improvements must be made in writing and in the manner and at the time aforesaid. All claims for damages therefor shall be waived by such property owner in case no written objection is filed by him, provided that notice of the passage of the resolution of intention has been actually published and the notice of improvements posted as provided in this part.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 10, Ch. 147, L. 1921; re-en. Sec. 4583, R.C.M. 1921; re-en. Sec. 4583, R.C.M. 1935; R.C.M. 1947, 16-1610.

7-12-2141 through 7-12-2150 reserved.

7-12-2151. Assessment of costs. To defray the cost of making any of the improvements provided for in this part, the board of county commissioners shall adopt the following method of assessment:

(1) The board shall assess the entire cost of such improvements against the entire district. Each lot or parcel of land assessed in such district shall be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

(2) Where said rural improvement district is located more than 5 miles from the boundary of an incorporated city or town, said assessment may, at the option of the board, be based upon the assessed value of the lots or pieces of land within said district.

(3) The board in its discretion shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(part).

7-12-2152. Exception for owners of water ditches under certain circumstances. The owner or owners of open ditches carrying irrigation or other water shall not be included in any rural improvement district under this part for the purpose of assessment to support the rural improvement district for the installation, repair, or maintenance of any protective devices referred to in 7-12-2102. Such devices or improvements shall provide access to and shall not be constructed so as to hinder the operation and maintenance of the ditch.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R.C.M. 1921; amd. Sec. 1, Ch. 133, L. 1929; re-en. Sec. 4574, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 134, L. 1961; amd. Sec. 1, Ch. 304, L. 1969; R.C.M. 1947, 16-1601(part).

7-12-2153. Incidental expenses considered as cost of improvements. The cost and expense connected with and incidental to the formation of any special improvement district, including the cost of preparation of plans, specifications, maps, or plats; engineering, superintendence, and inspection; and preparation of assessment rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 16, Ch. 147, L. 1921; re-en. Sec. 4589, R.C.M. 1921; re-en. Sec. 4589, R.C.M. 1935; R.C.M. 1947, 16-1616(part).

7-12-2154. Payment of damages incurred as a result of improvements. Whenever the owner or anyone interested in any property situated in the special improvement district, after filing with the county clerk a written notice claiming that his property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of any improvement in the special improvement district:

(1) before the resolution levying the assessment to defray the cost of making the improvement in the district is passed and adopted by the board of county commissioners, the amount ordered to be recovered shall be added to and constitute a part of making the improvements; but

(2) if the resolution levying the assessment to defray the cost and expenses of making the improvement has been passed and adopted by the board, it shall pass and adopt a supplemental resolution levying an additional assessment against the property in the district for the purpose of paying the amount awarded and the supplemental resolution shall be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvements.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 15, Ch. 147, L. 1921; re-en. Sec. 4588, R.C.M. 1921; re-en. Sec. 4588, R.C.M. 1935; R.C.M. 1947, 16-1615; amd. Sec. 4, Ch. 251, L. 1979.

7-12-2155. Apportionment of costs between corner lots and inside lots. In order to apportion the cost of any of the improvements provided for in this part between the corner lots and inside lots of any block, the board of county commissioners may, in the resolution creating any improvement district, provide that whenever any of the improvements provided for in this part shall be along any side street or abutting upon the side of any corner lot or block, the amount of the assessment against the property in said district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(part).

7-12-2156. Responsibility for costs for improvements close to street railway. Whenever any portion of the surface of a street is kept or used by any person, firm, or corporation for railroad or for street railway purposes, the cost and expense of making such improvements between the rails and for 1 foot on each side thereof shall be paid by the person, firm, or corporation owning such railroad; and where double tracks of railroads are laid, such person, firm, or corporation shall pay the costs of making such improvement or improvements between such tracks and between all switches and spurs.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 11, Ch. 147, L. 1921; re-en. Sec. 4584, R.C.M. 1921; amd. Sec. 2, Ch. 133, L. 1929; amd. Sec. 1, Ch. 131, L. 1935; re-en. Sec. 4584, R.C.M. 1935; amd. Sec. 1, Ch. 53, L. 1939; amd. Sec. 1, Ch. 136, L. 1941; R.C.M. 1947, 16-1611(2).

7-12-2157. Status of federal property within improvement district. Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the board shall in the resolution of intention declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement. The cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the county from its general fund.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 12, Ch. 147, L. 1921; re-en. Sec. 4585, R.C.M. 1921; re-en. Sec. 4585, R.C.M. 1935; R.C.M. 1947, 16-1612.**

7-12-2158. Resolution for levy and assessment of tax. (1) To defray the cost of making improvements in any special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this part.

(2) Such resolution shall contain a description of each lot or parcel of land, with the name of the owner if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent.

(3) Such resolution, signed by the chairman of the board, shall be kept on file in the office of the county clerk.

History: **(1), (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R.C.M. 1921; re-en. Sec. 4586, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1947; amd. Sec. 1, Ch. 40, L. 1965; Sec. 16-1613, R.C.M. 1947; (3)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec. 4587, R.C.M. 1935; Sec. 16-1614, R.C.M. 1947; R.C.M. 1947, 16-1613(part), 16-1614(part).**

7-12-2159. Notice of resolution for levy and assessment of tax — protest and hearing. (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the county clerk and is subject to inspection, shall be published at least once in a newspaper published nearest to where the special improvement is to be made.

(2) The notice shall state the time at and place in which objections to the final adoption of the resolution will be heard by the board of county commissioners. The time for the hearing may not be less than 5 days after the publication of the notice.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec. 4587, R.C.M. 1935; R.C.M. 1947, 16-1614(part); amd. Sec. 5, Ch. 251, L. 1979.**

7-12-2160. Hearing on protest. (1) At the time so fixed, the board of county commissioners shall meet and hear all such objections and for that purpose may adjourn from day to day.

(2) The board may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer 2 days after its passage.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 14, Ch. 147, L. 1921; re-en. Sec. 4587, R.C.M. 1921; re-en. Sec. 4587, R.C.M. 1935; R.C.M. 1947, 16-1614(part).**

7-12-2161. Payment of maintenance costs — resolution for assessment and for change of boundaries. (1) It shall be the duty of the board to estimate, as near as practicable, the cost of maintaining, preserving, or repairing the improvements in each district for each year beginning January 1 or such other time as it may appear necessary.

(2) Before the first Monday in September of each year, the board shall pass and finally adopt a resolution levying and assessing all the property within the district with an amount equal to the whole cost of maintaining, preserving, or repairing said improvements within the district. The assessment shall be proportioned as provided in 7-12-2108.

(3) Said resolution levying assessments to defray the cost of maintenance, preservation, or repair of such improvements shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement district.

(4) The board shall have the power of changing by resolution, not more than once a year, the boundaries of any maintenance district.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(part).

7-12-2162. Improvement district maintenance fund. The money collected from the assessment provided for in 7-12-2161 shall be paid into a fund known as the special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated. Such fund shall be used to defray the expense of maintenance, preservation, or repair of said improvements and for no other purpose.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619(part).

7-12-2163. Collection of district assessments by county treasurer. Where any resolution of assessment, either for construction or maintenance, has been duly certified by the county clerk, it shall be the duty of the county treasurer, in accordance with the provisions of this title, to collect such assessment in the same manner and at the same time as taxes for general and municipal purposes are collected by him.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 22, Ch. 147, L. 1921; re-en. Sec. 4595, R.C.M. 1921; re-en. Sec. 4595, R.C.M. 1935; R.C.M. 1947, 16-1622.

7-12-2164. Payment of tax under protest — action to recover. (1) When any tax levied and assessed under any of the provisions of this part is deemed unlawful by the party whose property is thus taxed or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest to the county treasurer.

(2) Thereupon, such party so paying or his legal representative may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid or against the county in whose behalf the same was collected to recover such tax or any portion thereof so paid under protest. Any action instituted to recover such tax paid under protest must be commenced within 60 days after the date of payment thereof.

(3) The tax so paid under protest shall be held by the county treasurer until the determination of any action brought for the recovery thereof.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 24, Ch. 147, L. 1921; re-en. Sec. 4597, R.C.M. 1921; re-en. Sec. 4597, R.C.M. 1935; R.C.M. 1947, 16-1624.

7-12-2165. Procedure to correct assessment and relevy and collect tax. (1) Whenever, by reason of any alleged nonconformity to law or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the board of county commissioners may make all necessary orders and may take all necessary steps to correct, reassess, and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by the law or resolution relating thereto. The board may reassess and relevy the tax or assessment with the same force and effect as an original levy.

(2) Any special tax, upon reassessment or relevy, shall, so far as practicable, be levied and collected the same as it would have been if the first levy had been enforced. Any provision of any law specifying a time when or order in which acts shall be done in a proceeding which may result in a special tax are subject to the qualifications of this part.

(3) Whenever any apportionment or assessment is made and any property is assessed too little or too much, the assessment may be corrected and reassessed for such additional amount as is proper or the assessment may be reduced even to the extent of refunding the tax collected.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 23, Ch. 147, L. 1921; re-en. Sec. 4596, R.C.M. 1921; re-en. Sec. 4596, R.C.M. 1935; R.C.M. 1947, 16-1623(part); amd. Sec. 6, Ch. 251, L. 1979.**

7-12-2166. Certain errors not to invalidate assessments or liens. (1) When, under any of the provisions of this part, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

(2) Any mistake in the description of property or the name of the owner shall not vitiate any liens created by this part unless it is impossible to identify the property from the description.

History: **(1)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 18, Ch. 147, L. 1921; re-en. Sec. 4591, R.C.M. 1921; re-en. Sec. 4591, R.C.M. 1935; Sec. 16-1618, R.C.M. 1947; (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 25, Ch. 147, L. 1921; re-en. Sec. 4598, R.C.M. 1921; re-en. Sec. 4598, R.C.M. 1935; Sec. 16-1625, R.C.M. 1947; R.C.M. 1947, 16-1618, 16-1625.**

7-12-2167. Term of payment of assessments. (1) Except as provided in subsection (2), the payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed 30 years, payment to be made in equal annual installments.

(2) If federal loans are available, payments may be spread over a term of not to exceed 40 years.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R.C.M. 1921; re-en. Sec. 4586, R.C.M. 1935; amd. Sec. 1, Ch. 140, L. 1947; amd. Sec. 1, Ch. 40, L. 1965; R.C.M. 1947, 16-1613(part).**

7-12-2168. Assessments and certain other charges as liens. (1) Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied from and after the date of the passage of the resolution levying such assessment. This lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

(2) Any special assessment levied and made for any of the purposes mentioned in 7-12-2120 and 7-12-2161, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

History: (1)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 17, Ch. 147, L. 1921; re-en. Sec. 4590, R.C.M. 1921; re-en. Sec. 4590, R.C.M. 1935; Sec. 16-1617, R.C.M. 1947; (2)En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 19, Ch. 147, L. 1921; re-en. Sec. 4592, R.C.M. 1921; amd. Sec. 3, Ch. 133, L. 1929; amd. Sec. 1, Ch. 104, L. 1935; re-en. Sec. 4592, R.C.M. 1935; R.C.M. 1947, 16-1619; R.C.M. 1947, 16-1617, 16-1619(part).

7-12-2169. Use of bonds and warrants. All costs and expenses incurred in any improvement district in the construction or maintenance of any improvement specified in this part shall be paid for by special improvement district bonds or warrants. The board of county commissioners shall provide for making payments for maintenance or improvements in any rural improvement district by the method provided in 7-12-2172 and 7-12-2173.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part).

7-12-2170. Form of bond or warrant. Such bonds or warrants shall be drawn in substantially the following form:

District No. ....
United States of America
State of Montana

Warrant or Dollars
(Bond No. ....) $....

Interest at the rate of ....% per annum, payable annually.

Special Improvement District Coupon Warrant or Bond
...., Montana
Issued by the county of ...., Montana

The county treasurer of .... County, Montana, will pay to .... or bearer the sum of .... dollars as authorized by resolution No. ...., as passed on the .... day of ...., 19.., creating or maintaining the special improvement district No. .... for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of .... County, Montana.

This warrant (or bond) bears interest at the rate of ....% per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of .... each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached which bear the signatures of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts as described in said resolution hereinbefore referred to and is not a general obligation of the county.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof and in the manner provided for the redemption of the same.

It is hereby certified and recited that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened, and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of ...., Montana, relating to the issuance thereof.

Dated at ...., Montana, this .... day of ...., 19.., County of ...., Montana.

(SEAL)

By ...., chairman of the board of county commissioners.

(SEAL)

....
County Clerk

Registered at the office of the county treasurer of .... County, Montana, this .... day of ...., 19...

....
County Treasurer

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part); amd. Sec. 1, Ch. 308, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "and is not a general obligation of the county" after "hereinbefore referred to" in the middle of the section.

7-12-2171. Details relating to rural improvement district bonds and warrants. (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district (that is, either the construction or maintenance fund, as the case may be) and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable annually on January 1 of each year unless the board of county commissioners prescribes another date. Such warrants (or bonds) shall bear the signatures of the chairman of the board and the county clerk and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the chairman of the board and the county clerk. Said coupons may bear the facsimile signatures of said officers in the discretion of the board.

(2) Said bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period of not to exceed 30 years; except that if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(2).

7-12-2172. Procedure to issue bonds and warrants. (1) The board of county commissioners shall sell bonds or warrants issued under the provisions of 7-12-2169 through 7-12-2174, in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district, to the highest and best bidder therefor for cash and for not less than the face value of such bonds or warrants, including interest thereon.

(2) The provisions of 7-7-4251 through 7-7-4254 which relate to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as the same are applicable thereto and not in conflict with the provisions of this section and 7-12-2173, shall apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling such bonds or warrants.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part).

7-12-2173. Disposition of bond or warrant proceeds. The board of county commissioners shall use the proceeds of such sale in making payment to the contractor or contractors. Such payment may be made either from time to time, on estimates made by the engineer in charge of such improvements for the county, or upon the entire completion of the improvements and the acceptance thereof by the board.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(part).

7-12-2174. Redemption of bonds and warrants. (1) The county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in order of their registration.

(2) Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds available therefor in the special improvement district fund against which said warrants (or bonds) are issued. Whenever there are any funds in any special improvement district fund after paying the interest

on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds) which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date.

(3) The date of redemption shall be fixed by the county treasurer and shall not be less than 10 days after the date of publication or of service of notice. The county treasurer shall give notice by publication once in a newspaper published in the city or, at the option of the county treasurer, by written notice to the holders of such warrants (or bonds), if their addresses be known, of the number of warrants (or bonds) and the date on which payment will be made. On the date fixed for redemption interest shall cease.

History: **En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R.C.M. 1921; re-en. Sec. 4593, R.C.M. 1935; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965; amd. Sec. 22, Ch. 234, L. 1971; R.C.M. 1947, 16-1620(3).**

7-12-2175. Investment of interest and sinking fund money. (1) The governing body of a county in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank insured by the federal deposit insurance corporation or in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn.

History: **En. Sec. 1, Ch. 45, L. 1965; R.C.M. 1947, 11-2288(part).**

7-12-2176 through 7-12-2180 reserved.

7-12-2181. Creation of rural improvement district revolving fund. The board of county commissioners of any county in the state which may create any rural special improvement district or districts for any purpose shall (in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein and the interest thereon as it becomes due) create, establish, and maintain by resolution a fund to be known and designated as the rural special improvement district revolving fund.

History: **En. Sec. 1, Ch. 188, L. 1957; R.C.M. 1947, 16-1633.**

7-12-2182. Sources of money for revolving fund. (1) For the purpose of providing funds for such revolving fund the board of county commissioners:

(a) may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the county such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be considered and shall be loans from such general fund to the revolving fund; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such county as shall be necessary to meet the financial requirements of such fund. However, a tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding rural special improvement district bonds and warrants. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding rural special improvement district bonds and warrants.

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-2183 shall, by order of the board, be transferred to the revolving fund. After all the bonds and warrants issued on any rural special improvement district have been fully paid, all money remaining in such district fund shall by the order of the board be transferred to and become part of the revolving fund.

History: **En. Secs. 2, 4, Ch. 188, L. 1957; R.C.M. 1947, 16-1634, 16-1636(part); amd. Sec. 2, Ch. 308, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted the last two sentences of (1)(b) for "such levy, together with such transfer, not to exceed in any one year 5% of the principal amount of the then-outstanding rural special improvement district bonds and warrants".

7-12-2183. Loan from revolving fund to meet payments on bonds and warrants or to make emergency repairs. (1) Whenever any rural special improvement district bond or warrant or any interest thereon shall become due and payable and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the board of county commissioners, be loaned by the revolving fund to such district fund. Thereupon, such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) Whenever any rural special improvement district maintenance fund does not have sufficient money to pay the cost of emergency repairs, the board of county commissioners by order or resolution may loan money from the revolving fund to such district maintenance fund. Such loan shall be repaid in annual installments in not more than 3 years. In no event may the loans interfere with the payments of bonds or warrants. The loan shall be repaid by an assessment as provided by 7-12-2120 if other funds are not available. If there are not sufficient funds in the revolving fund to make the loans without interfering with the payment of bonds or warrants, then the loans may not be made.

History: **En. Sec. 3, Ch. 188, L. 1957; R.C.M. 1947, 16-1635(1); amd. Sec. 1, Ch. 339, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (2).

7-12-2184. Lien arising due to loan from revolving fund. (1) Whenever any loan is made to any rural special improvement district fund from the revolving fund, the revolving fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments and on all unpaid assessments and installments of assessments on such district (whether delinquent or not) and on all money thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond or warrant for payment of which, or of interest thereon, such loan was made.

(2) If, after all the bonds and warrants issued on any rural special improvement district have been fully paid and all moneys remaining in such district fund have been transferred to the revolving fund, there still remains a debt from the district to the revolving fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the revolving fund.

History: **En. Sec. 4, Ch. 188, L. 1957; R.C.M. 1947, 16-1636(part).**

7-12-2185. Covenants to utilize revolving fund. (1) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof, to the extent that funds are available; and

(b) to provide funds for such revolving fund pursuant to the provisions of 7-12-2182 by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the board may so agree to and undertake, subject to the maximum limitations imposed by 7-12-2182.

(2) The undertakings and agreements shall be binding upon said county so long as any of said special improvement district bonds or warrants so offered or any interest thereon remain unpaid.

History: **En. Sec. 3, Ch. 188, L. 1957; R.C.M. 1947, 16-1635(2).**

7-12-2186. Utilization of excess money in revolving fund. Whenever there is in the revolving fund an amount in excess of 5% of the then-outstanding rural special improvement district bonds and warrants and the board considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants or interest thereon, the board may order the amount the board considers greater than the amount necessary or any part thereof transferred to the general fund of the county.

History: **En. Sec. 5, Ch. 188, L. 1957; R.C.M. 1947, 16-1637; amd. Sec. 3, Ch. 308, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "5% of the then-outstanding rural special improvement district bonds and warrants and the board considers any part of the excess to be greater than the amount" for "the amount which the board deems" after "in excess of"; substituted "the amount the board considers greater than the amount necessary" for "such excess" after "board may order".

Part 22

Special Provisions for Districts for Lighting

7-12-2201. Maintenance of lighting system. When there has been or shall be created a rural improvement district, according to the provisions of part 21, for the purpose of securing a lighting system for the territory embraced in such rural improvement district, the board of county commissioners of such county may enter into a contract with other persons or corporations for the purpose of furnishing light to said rural improvement district when:

(1) no expense of construction is incurred by such rural improvement district in the installation of such lighting system;

(2) it is necessary only to secure funds for the maintenance and operation of said system; and

(3) lights for said territory can best be secured by entering a contract for such lighting with some other person or corporation.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(1).

7-12-2202. Apportionment of costs of maintaining lighting system. (1) The cost of the maintenance and operating service to said rural improvement district may be apportioned among the various tracts of land within said improvement district:

(a) in proportion to the assessed value of said lands within said improvement district, as determined by the board of county commissioners;

(b) at the option of said board and as determined by said board, in proportion to the lineal front footage of each tract, any part of which is in the district and abuts the street or roadway along which the lighting system is to be maintained; or

(c) in proportion to the area, as determined by said board, of that portion of each tract included in the district.

(2) (a) Before the first Monday of September of each year, the board shall pass and finally adopt a resolution levying and assessing upon all the property within the district an amount equal to the whole cost of maintaining said lighting system. The same shall be proportioned against the several tracts of land in said district as provided in this part.

(b) Said resolution levying assessments to defray the cost of maintenance shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement districts.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part).

7-12-2203. Rural improvement district maintenance fund. (1) The money collected pursuant to 7-12-2202, shall be paid into a fund known as the special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated.

(2) Such funds shall be used to defray the expense of maintenance of said system and for no other purpose.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part).

7-12-2204. Alteration of maintenance district boundaries. The board has the power, by resolution, of changing not more than once a year, the boundaries of any maintenance district.

History: En. Sec. 2, Ch. 58, L. 1933; re-en. Sec. 4601.2, R.C.M. 1935; R.C.M. 1947, 16-1630(part).

7-12-2205. Assessment and certain other charges as lien. Any assessment levied and made for any purpose mentioned in this part, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessments are made and levied from and after the date of the final passage and adoption of the resolution levying the same. This lien can be only extinguished by payment of such assessments, with all penalties, costs, and interest.

History: En. Sec. 1, Ch. 58, L. 1933; re-en. Sec. 4601.1, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1959; R.C.M. 1947, 16-1629(part).

7-12-2206. Application of part. Provisions of this part shall only apply to the method of securing funds for the maintenance of rural improvement districts for lighting systems.

History: En. Sec. 2, Ch. 58, L. 1933; re-en. Sec. 4601.2, R.C.M. 1935; R.C.M. 1947, 16-1630(part).

Part 23

Special Provisions for Districts for Sanitary and Storm Sewers

7-12-2301. Rental provisions of municipal public sewer law applicable to rural districts. The provisions of part 42 of chapter 13 referring to sewer rentals apply to special improvement districts for the constructing and maintaining and operating of sanitary sewers and storm sewers, and the powers conferred on councils in part 42 of chapter 13 are conferred on each board of county commissioners as far as those powers relate to sewer rentals.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(6); amd. Sec. 7, Ch. 251, L. 1979.

Parts 24 through 40 reserved

Part 41

Special Improvement Districts

7-12-4101. Definitions. Unless the context indicates otherwise, as used in this part and part 42, the following definitions apply:

(1) "Blocks" means blocks, whether regular or irregular, that are bounded by main streets or by main streets and a boundary line of the city.

(2) "City" or "municipality" means all corporations organized for municipal purposes.

(3) "City clerk" or "clerk" means any person or officer who is clerk of the council.

(4) "City council" means any body or board that is the legislative department of the government of the city.

(5) "City engineer" means any person or officer who is responsible for the maintenance and improvement of the streets in a city.

(6) "City treasurer" means any person who, under whatever name or title, is the custodian of the funds of the municipality.

(7) "Incidental expenses" means the compensation of the city engineer for work done by him, the cost of printing and advertising as provided in this part and part 42, the compensation of persons appointed by the city engineer to take charge of and superintend any of the work mentioned in this part, or the expenses of making the assessment for any work authorized by this part.

(8) "Main street" means such actually opened street as bounds a block.

(9) "Paved" or "repaved" means pavement of stone (whether paving blocks or macadam), of bituminous rock or asphalt, or of wood, brick, or other material (whether patented or not) which the city council adopts by ordinance or resolution.

(10) "Quarter-block", when used in reference to irregular blocks, means all lots or portions of lots having any frontage on either of two intersecting streets halfway from the intersection to the next main street or, when no main street intervenes, all the way to a boundary line of the city.

(11) "Street" means avenues, highways, lanes, alleys, crossings or intersections, courts, and places which have been dedicated and accepted according to the law or in common and undisputed use by the public for a period of not less than 5 years.

(12) "Street intersection" means that parcel of land at the point of juncture or crossing of intersecting streets which lies between lines drawn from corner to corner of all lot lines immediately cornering at such juncture.

(13) "Work", "improved", or "improvement" means all work or the securing of property mentioned in this part and part 42 and also the construction, reconstruction, and repair of all or any portion of work.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part); amd. Sec. 8, Ch. 251, L. 1979.

7-12-4102. Authorization for creation of special improvement districts. (1) The city or town council has power to create special improvement districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding 20 years; to make such assessments payable in installments; and to pay all expenses of whatever character incurred in making such improvements with special improvement warrants.

(2) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to:

(a) create special improvement districts for building, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;
(v) graveled or regraveled;
(vi) piled or repiled;
(vii) capped or recapped;
(viii) surfaced or resurfaced;
(ix) oiled or reoiled;

(d) create special improvement districts and order the construction or reconstruction therein of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees thereon;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by such city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes, hose connections for irrigating; hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water;

(f) create special improvement districts and order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of such city; and

(g) maintain, preserve, and care for any and all of the improvements herein mentioned.

(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city where the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the city may be included in the special improvement district only if 60% of those property owners approve of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the

special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions.

History: (1)En. Subd. 80, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.79, R.C.M. 1947; amd. Sec. 11, Ch. 234, L. 1971; Sec. 11-982, R.C.M. 1947; (2)En. Sec.2, Ch. 89, L. 1913; amd Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; Sec. 11-2202, R.C.M. 1947; R.C.M. 1947, 11-982, 11-2202(part); (3)En. Sec. 2, Ch. 342, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (3).

7-12-4103. Formation of district to defray cost of acquiring private property. The city council is also hereby authorized to create a district as hereinafter specified for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening, or extending any street, avenue, or alley within the corporate limits of such city.

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; R.C.M. 1947, 11-2202(part).

7-12-4104. Resolution of intention to create special improvement district. (1) Before creating any special improvement district for the purpose of making any of the improvements or acquiring any private property for any purpose authorized by this part, the city council shall pass a resolution of intention to do so.

(2) The resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements which are to be made and an approximate estimate of the cost thereof. When any improvement is to be made in paving, the city or town council may in describing the general character of the same describe several kinds of paving.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(1).

7-12-4105. Reference to description in resolution of intention sufficient. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements in any and all improvement districts, it shall be sufficient to briefly describe the work or the assessment district, or both, and to refer to the resolution of intention for the description and further particulars.

History: En. Sec. 7, Ch. 89, L. 1913; re-en. Sec. 5231, R.C.M. 1921; re-en. Sec. 5231, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1955; R.C.M. 1935, 11-2208.

7-12-4106. Notice of passage of resolution of intention. (1) Upon having passed such resolution, the council must give notice of the passage of such resolution of intention.

(2) The notice must be published for 5 days in a daily newspaper or in some one issue of a weekly paper published in the city or town or, in case no newspaper be published in such city, then by posting for 5 days in three

public places in the city or town. A copy of such notice shall be mailed to every person, firm, or corporation or the agent of such person, firm, or corporation having real property within the proposed district listed in his name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, upon the same day such notice is first published or posted.

(3) Such notice must describe the general character of the improvement or the improvements so proposed to be made, state the estimated cost thereof, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvements or the creation of such district. Said notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(part).

7-12-4107. General provisions related to notice. (1) (a) The notices, resolutions, orders, or other matter required to be published by the provisions of this part or part 42 shall be published in a daily newspaper or in a semiweekly or weekly newspaper to be designated by the council of such city, as often as the same is issued during the period specified for said publication; and no other statute shall govern or be applicable to the publications herein provided for.

(b) In case there is no daily, semiweekly, or weekly newspaper printed or circulated in any such city, then such notices, resolutions, orders, or other matters as are herein required to be published in a newspaper shall be posted and kept posted, for the same length of time as required herein for the publication of the same in a daily, semiweekly, or weekly newspaper, in three of the most public places in such city except as herein otherwise specifically provided.

(2) Proof of the publication or posting of any notice provided for herein shall be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the poster of the notice.

(3) No publication or notice other than that provided for in this part or part 42 shall be necessary to give validity to any of the proceedings provided for therein.

(4) The word "twice", as used in this part and part 42 referring to the number of times notices, resolutions, or other matters shall be published, shall be held to mean the publication of the same in two entire issues of a newspaper, one being on one day and the other issue being on a subsequent day of the same or a subsequent week.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(4).

7-12-4108. Responsibility for posting and publication of notice. (1) Whenever any resolution, order, notice, or determination is required to be published or posted and the duty of posting or procuring the publication or posting of the same is not specifically enjoined upon any officer of the city, it shall be the duty of the city clerk to post or procure the publication or posting thereof, as the case may be.

(2) No proceeding or step herein shall be invalidated or affected by any error or mistake or departure herefrom as to the officer or person posting or procuring the publication or posting of any resolution, notice, order, or determination hereunder when the same is actually published or posted for the time herein required.

History: En. Sec. 34, Ch. 89, L. 1913; re-en. Sec. 5257, R.C.M. 1921; re-en. Sec. 5257, R.C.M. 1935; R.C.M. 1947, 11-2243.

7-12-4109. Extension of proposed district. The city council may charge the expenses of the work or improvement to an extended district that may include other lots not fronting on the improvement and which the council in its resolution of intention declares to be the district benefited by the work or improvements whenever:

(1) the contemplated work of improvement, in the opinion of the council, is of more than local or ordinary public benefit; or

(2) the total estimated costs and expenses thereof, according to estimates furnished by the city engineer, would exceed one-fifth of the total taxable value of the lots and lands fronting upon said proposed work or improvement according to the valuation fixed by the last assessment roll.

History: En. Sec. 4, Ch. 89, L. 1913; re-en. Sec. 5228, R.C.M. 1921; amd. Sec. 1, Ch. 135, L. 1923; amd. Sec. 1, Ch. 150, L. 1929; re-en. Sec. 5228, R.C.M. 1935; amd. Sec. 29, Ch. 566, L. 1977; R.C.M. 1947, 11-2205.

7-12-4110. Protest against proposed work or district. (1) At any time within 15 days after the date of the first publication of the notice of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed or both.

(2) Such protest must be in writing and be delivered to the clerk of the city or town council or commission not later than 5 p.m. of the last day within said 15-day period. Said clerk shall endorse thereon the date and hour of its receipt by him.

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(1).

7-12-4111. Who considered owner. (1) The person owning the fee; the person in whom, on the day the action is commenced, appears the legal title to the lot and lands by deed duly recorded in the county recorder's office in each county; or the person in possession of lands, lots or portions of lots, or buildings under claim or exercising acts of ownership over the same for himself or as the executor, administrator, or guardian of the owner shall be regarded, treated, and deemed to be the "owner" for the purpose of this part and part 42, according to the intent and meaning of that word as used in this part and part 42.

(2) In case of property leased, the possession of the tenant or lessee holding and occupying under such persons shall be deemed to be the possession of such owner.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(1).

7-12-4112. Hearing on protest. (1) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) The council or commission may adjourn said hearing from time to time. Protestants shall have the right to withdraw protest or protests at any time before final action thereon by the council or commission.

(3) In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered to the same effect as other property in the proposed district.

History: **En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(part).**

7-12-4113. Sufficient protest to bar proceedings — exceptions. (1) Except as provided in subsections (2) and (3), no further proceedings shall be taken for a period of 6 months from the date when said sufficient protest shall have been received by said clerk of the city or town council or commission when the protest is against the proposed work and:

(a) the cost thereof is to be assessed against property fronting thereon and the council or commission finds that such protest is made by the owners of more than 50% of the property fronting on the proposed work; or

(b) the cost thereof is to be assessed upon the property within an extended district and the council or commission finds that such protest is made by the owners of more than 50% of the area of the property to be assessed for said improvements.

(2) The council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface when the improvement proposed is the paving, with necessary incidentals, of not more than one cross block to connect with streets or avenues already paved for a continuous distance of three blocks or more running at a right angle (or substantially so) with the single cross block so proposed to be paved.

(3) In case the improvement is the construction of a sanitary sewer, such protest may be overruled by an affirmative vote of a majority of the members of the council or commission unless such protest is made by the owners of more than 75% of the property affected, as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewer.

History: **En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1923; re-en. Sec. 5229, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969; R.C.M. 1947, 11-2206(part).**

7-12-4114. Resolution creating special improvement district. When no protests have been delivered to the clerk of the city council within 15 days after the date of the first publication of the notice of the passing of the resolution of intention, when a protest shall have been found by said council to be insufficient or shall have been overruled, or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon, the council shall be deemed to have acquired jurisdiction to order the proposed improvements. Before ordering any of said proposed improvements, the council shall pass a resolution creating the special improvement district in accordance with the resolution of intention theretofore introduced and passed by the council.

History: En. Sec. 6, Ch. 89, L. 1913; amd. Sec. 4, Ch. 142, L. 1915; re-en. Sec. 5230, R.C.M. 1921; re-en. Sec. 5230, R.C.M. 1935; R.C.M. 1947, 11-2207.

7-12-4115. Statement of allocation of assessments to improvements, repairs, and maintenance. In all cities or towns, the city or town council shall have power and it is hereby made the duty of each council (where it is necessary or advisable in connection with any special improvement district to provide, in addition to the construction of the proposed improvements, for repairs to existing facilities or for maintenance of improvements or repairs or for both such repairs and maintenance) to include in the resolution or ordinance creating such special improvement district or providing for assessments to defray the cost of improvements, repairs, and maintenance, a statement showing the allocation of the total amounts, either in dollars and cents or in percentages of said total amounts, to be assessed or assessed to said different purposes: to improvements, to repairs, if any, and to maintenance, if any.

History: En. Sec. 1, Ch. 39, L. 1953; R.C.M. 1947, 11-2286.

7-12-4116. Designation of nature of improvement district. In all cases set out in 7-12-4115, the city or town council shall designate the special district formed as a special improvement and repair district or a special improvement and maintenance district or a special improvement, repair, and maintenance district, as the case may be.

History: En. Sec. 2, Ch. 39, L. 1953; R.C.M. 1947, 11-2287.

7-12-4117. Combination of several improvements in one resolution. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this part and any number of streets and rights-of-way or portions thereof, and it may except therefrom any of said work already done upon a street to the official grade.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(part).

7-12-4118. Adjournment of hearings. Whenever in proceedings hereunder a time and place for hearing are fixed by the city council and from any cause the hearing is not then and there held or regularly adjourned to a fixed time and place, the power or jurisdiction of the council in the premises shall not thereby be divested or lost, but the council may proceed anew to fix a time and place for the hearing and cause notice thereof to be given by publication by at least one insertion in a daily, semiweekly, or weekly newspaper, such publication to be at least 5 days before the date of the hearing. Thereupon the council shall have power to act as in the first instance.

History: En. Sec. 32, Ch. 89, L. 1913; re-en. Sec. 5256, R.C.M. 1921; re-en. Sec. 5256, R.C.M. 1935; R.C.M. 1947, 11-2242.

7-12-4119. Appointment of person to serve as city engineer. In all those cities where there is no city engineer, the city council is hereby authorized and empowered to appoint a suitable person to discharge the duties laid down as those of the city engineer in this part, and all provisions of this part applicable to the city engineer shall apply to such person so appointed.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part).

7-12-4120. Provision for municipalities not having mayor. In municipalities in which there is no mayor, the duties imposed upon said officer by the provisions of this part and part 42 shall be performed by the president of the council or other chief executive officer of the municipality.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(10).

7-12-4121. Record of expenses to be kept by city engineer. It shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district and certify the same to the city clerk.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part).

7-12-4122. Role of city clerk. It shall be the duty of the city clerk to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part).

7-12-4123. Manner of making demands for incidental expenses. All demands for incidental expenses mentioned in 7-12-4101(7) shall be presented to the city clerk by itemized bill, duly verified by oath of the demandant.

History: En. Sec. 31, Ch. 89, L. 1913; re-en. Sec. 5255, R.C.M. 1921; re-en. Sec. 5255, R.C.M. 1935; R.C.M. 1947, 11-2241(part).

7-12-4124 through 7-12-4130 reserved.

7-12-4131. Modification of trafficways and courts for special improvement districts. All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated or which may hereafter be opened or dedicated to public use, are open public streets, alleys, places, or courts for the purposes of this part. The city council of each municipality may establish and change the grades of the streets, alleys, places, or courts and fix the width thereof and may acquire private property for right-of-way and order to be done any of the work mentioned in this part under the proceedings described in this part.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(1).

7-12-4132. Power to require underground placement of utilities within district. (1) It is provided that the city council shall have the same jurisdiction and powers as provided in 7-12-4102 and 7-12-4103 (before doing any of the work mentioned in this part) to require any public service corporation or company, firm, or person occupying such streets, avenues, or alleys, at their own expense and within a reasonable time to be fixed by the council, to place in an underground conduit, in such manner as may be directed by the council, all wires; electric conduits; or telephone, telegraph, power, or power transmission lines or appurtenances thereto or appliances owned, held, or enjoyed in connection therewith.

(2) The whole cost so assessed shall at no time exceed the sum of $1.50 per lineal foot plus the cost of the pipe.

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R.C.M. 1921; re-en. Sec. 5226, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965; R.C.M. 1947, 11-2202(2); amd. Sec. 1, Ch. 594, L. 1979.

7-12-4133. Power to require certain utility connections. (1) The city or town council shall have power to require connections from gas pipes, water pipes, steam heating pipes, and sewers to the curb line of the adjacent property to be made before the permanent improvement of the streets whereon they are located and to regulate the making of such connections on the already improved streets or on unimproved streets.

(2) (a) In case the owners of the property on such streets shall fail to make such connections within the time fixed by the council, the council may cause such connections to be made and shall assess against the property in front of which said connections are made the entire cost and expense thereof.

(b) All assessments levied under the provisions of this section shall be enforced and collected in the same manner as other special assessments provided for in part 44 of chapter 6 and amendments thereof. All such assessments shall be a lien against the property.

History: En. Sec. 2, p. 213, L. 1897; re-en. Sec. 3368, Rev. C. 1907; re-en. Sec. 5226a, R.C.M. 1921; re-en. Sec. 5226.1, R.C.M. 1935; R.C.M. 1947, 11-2203.

7-12-4134. Special provision for paving street in which car tracks are located. Where the special improvement contemplated is the paving of a street in which car tracks have been constructed, the city shall have the power and authority to order the general character of the material between the rails and 1 foot on each side of the rails to be of a different kind from that used in the remainder of the street. The general character of the material to be used between the car tracks and 1 foot on each side of the rails shall be described in the resolution of intention in the same manner as the general character of the material used for the rest of the contemplated pavement.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(3).

7-12-4135. Responsibility for repairs due to operation of street railway. (1) Whenever any portion of the surface of a paved street is occupied or used for railway or street railway purposes, it shall be the duty of the owner or operator of such railway or street railway to fully repair any injury or damage to such pavement caused by such railway or street railway, either in the operation of its cars or in the laying or repair of its tracks.

(2) In case of a failure or refusal of such owner or operator to so repair such pavement within a reasonable time after notice by the city council or commission, the council or commission is authorized and empowered to cause such repairs to be made and to assess the cost thereof to such owner or operator and to enforce collection thereof as in the case of taxes.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(2).

7-12-4136. Maintenance of improvements. Where trees have been planted or grassplots constructed and grass sown thereon or any one or more of said improvements have been made in a special improvement district, it is hereby made the duty of the council of said city or town to cause said trees and grass to be watered, the grass cut, and trees trimmed and to otherwise maintain and preserve said improvements as the council shall deem suitable and proper.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part).

7-12-4137 through 7-12-4140 reserved.

7-12-4141. Bid for work. (1) The city council may call for bids or proposals for several kinds and types of materials for any improvements proposed to be made under this part and part 42, reserving the right to select the kind or type of material to be used in making any such improvements after the bids or proposals therefor shall have been opened, examined, and declared.

(2) Notice inviting proposals and referring to the specifications on file shall be published at least twice in a daily, semiweekly, or weekly newspaper published and circulated in said city and designated by the council for that purpose, and in case there is no newspaper published in said city, then it shall be posted in at least three public places.

(3) The time fixed for the opening of bids shall be not less than 10 days from the time of the final publication of said notice. All proposals or bids offered shall be accompanied by bid security as provided for in Title 18, chapter 1, part 2. Said proposals or bids shall be delivered to the clerk of the city council.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4142. Opening of bids. The bids shall be opened in public at a time and place to be designated by the city council at the previous council meeting.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4143. Decision on award of contract. (1) The city council may award the contract for said work or improvement to the lowest responsible bidder at the prices named in his bid and shall reject all proposals or bids other than the lowest regular proposal or bid of any responsible bidder.

(2) The council may reject any and all proposals or bids should it deem this for the public good and may also reject the bid of any party who has been delinquent or unfaithful in any former contract with the municipality.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4144. Procedure if all bids rejected or no bids received. If the bids are rejected or no bids are received, the city council may, at any time within 2 years thereafter and whenever and as often as the council deems it advantageous, readvertise for proposals or bids for the performance of the work as herein provided without further proceedings and thereafter proceed in the manner provided in 7-12-4141 through 7-12-4145.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4145. Procedure for dealing with bid securities. (1) If bids are rejected, the city council shall thereupon return to the proper parties the bid securities corresponding to the bids so rejected.

(2) The bid securities accompanying such accepted proposals or bids shall be held by the city clerk of said city until the contract for doing said work, as hereinafter provided, has been entered into either by said lowest bidder or by the owners of over 50% of the frontage, whereupon said bid security shall be returned to said bidder.

(3) If said bidder fails, neglects, or refuses to enter into the contract to perform said work or improvements as hereinafter provided, then the bid securities accompanying his bid and the amount therein mentioned shall be declared to be forfeited to said city and shall be collected by it and paid into the general fund.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4146. Retroactive application of bid procedures. The provisions of 7-12-4141 through 7-12-4145 shall be applicable to all special improvement districts created within 1 year preceding March 16, 1931.

History: En. Sec. 8, Ch. 89, L. 1913; amd. Sec. 5, Ch. 142, L. 1915; re-en. Sec. 5232, R.C.M. 1921; amd. Sec. 1, Ch. 173, L. 1931; re-en. Sec. 5232, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1974; amd. Sec. 1, Ch. 220, L. 1975; R.C.M. 1947, 11-2209(part).

7-12-4147. Procedure for property owners to do improvement work. The owners of three-fourths of the frontage of lots and lands liable to be assessed or their agents, who shall make oath that they are such owners or agents, shall not be required to present sealed proposals or bids but may, within 3 days after the award pursuant to 7-12-4143, elect to take such work and enter into a written contract to do the whole work at a price at least 5% less than the price at which the same has been awarded. All work done under such contract shall be subject to the same plans and specifications governing the lowest responsible bidder.

History: En. Sec. 9, Ch. 89, L. 1913; re-en. Sec. 5233, R.C.M. 1921; re-en. Sec. 5233, R.C.M. 1935; R.C.M. 1947, 11-2210(part).

7-12-4148. Contract with successful bidder. Should the owners referred to in 7-12-4147 fail to elect to take said work, to enter into a written contract therefor within 3 days, or to commence the work within 15 days after the date of such written contract and to prosecute the same with diligence to completion, it shall be the duty of the city council to enter into a contract with the original bidder to whom the contract was awarded at the prices specified in his bid.

History: En. Sec. 9, Ch. 89, L. 1913; re-en. Sec. 5233, R.C.M. 1921; re-en. Sec. 5233, R.C.M. 1935; R.C.M. 1947, 11-2210(part).

7-12-4149. Procedure if successful bidder does not enter into contract. (1) If the original bidder neglects, fails, or refuses for 15 days after the notice of award to enter into the contract, then the city council, without further proceedings, shall again advertise for proposals or bids as in the first instance and award the contract for said work to the then-lowest regular bidder.

(2) Should no bids be received in response to the call for proposals, the council may again advertise for bids under the same proceedings at any time within 6 months from the time set for the last reception of bids and let the contract to the then-lowest bidder. Such delay shall in no way affect the validity of any of the proceedings or assessments levied thereunder.

History: En. Sec. 10, Ch. 89, L. 1913; re-en. Sec. 5234, R.C.M. 1921; amd. Sec. 2, Ch. 173, L. 1931; re-en. Sec. 5234, R.C.M. 1935; R.C.M. 1947, 11-2211(part).

7-12-4150. Effect of failure to enter contract. The bids of all persons and the election of all owners, as aforesaid, who have failed to enter into the contract shall be rejected in any bidding or election subsequent to the first for the same work.

History: En. Sec. 10, Ch. 89, L. 1913; re-en. Sec. 5234, R.C.M. 1921; amd. Sec. 2, Ch. 173, L. 1931; re-en. Sec. 5234, R.C.M. 1935; R.C.M. 1947, 11-2211(part).

7-12-4151. Contractor's bond for successful completion of work. All contractors, contracting owners included, shall, at the time of executing any contract for street work, execute a bond to the satisfaction and approval of the city council in the form and manner provided for in Title 18, chapter 2, part 2.

History: En. Sec. 12, Ch. 89, L. 1913; re-en. Sec. 5236, R.C.M. 1921; re-en. Sec. 5236, R.C.M. 1935; amd. Sec. 2, Ch. 220, L. 1975; R.C.M. 1947, 11-2213.

7-12-4152. Procedure if person entering contract defaults on work. (1) If the contractor or owner who may have taken any contract does not complete the same within the time limited in the contract or within such further time as the city council may give him, the city engineer shall report such delinquency to the council.

(2) (a) The council may relet the unfinished portion of said work after pursuing the formalities prescribed in 7-12-4141 through 7-12-4145 for the letting of the whole in the first instance.

(b) The city shall have the right, at its option, to complete the contract and deduct any cost in excess of the contract price thereof from any money, bonds, or warrants due such contractor or owners. In the event there is no money, bonds, or warrants due such contractor or owners from which to deduct such cost, then the city shall have the right to sue such contractor or owners and recover from him such cost.

History: En. Sec. 11, Ch. 89, L. 1913; amd. Sec. 6, Ch. 142, L. 1915; re-en. Sec. 5235, R.C.M. 1921; re-en. Sec. 5235, R.C.M. 1935; R.C.M. 1947, 11-2212.

7-12-4153 through 7-12-4160 reserved.

7-12-4161. Choice in manner of assessing costs. (1) Except as provided in subsection (2), to defray the cost of the making of any of the improvements provided for in this part, the city council or commission shall adopt one of the methods of assessment, where applicable, provided in 7-12-4162 through 7-12-4165.

(2) The method of assessment provided for in 7-12-4163 shall not apply to assessments in improvement districts created under the provisions of 7-12-4109.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part).

7-12-4162. Assessment of costs — area option. (1) The city council or commission shall assess the entire cost of such improvements against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

(2) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(3) In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within 25 feet of the line of the street on which the improvement is to be made and all other land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of land within the district lying within 25 feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other land within the district shall bear.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(1)(a).

7-12-4163. Assessment of costs — frontage option. (1) The city council or commission shall assess the cost of such improvements against the entire district, each lot or parcel of land within such district bordering or abutting upon a street or streets whereon or wherein the improvement has been made to be assessed in proportion to the lineal feet abutting or bordering the same.

(2) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersections out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part).

7-12-4164. Assessment of costs — combined area-frontage option. Where curbs, gutters, alley approaches, streets, crossings, and utility service connections are an integral part of the creation of storm sewer districts, sanitary sewer districts, or street pavement districts, the city council or commission may assess a portion of the improvements upon the area basis as set forth under 7-12-4162, other portions of the improvements upon a lineal-feet basis as set forth under 7-12-4163, and utility service connections upon a lump sum based on the bid price in the improvement district contract and assessed only against the lots, tracts, or parcels of land served by the utility connection or connections, all within the same special improvement district, so long as such assessment is equitable.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(1)(c).

7-12-4165. Assessment of costs — offstreet parking option. (1) When the purpose of the assessment is for the establishment and/or improvement of offstreet parking as provided in this section, the city council or commission shall assess, against the real property specifically benefited by the offstreet parking facilities, the cost of the developments involved in proportion to the benefits received by each tract of land within said district.

(2) In determining the benefit to be received by each parcel of land, the council or commission shall consider:

(a) the relative distance of the parking facility from each parcel of land within the area of the special improvement district;

(b) the relative needs of parking spaces for each parcel of land located within the boundaries of said district, either as established by the city zoning ordinance, if any, or otherwise, with relation to the use of said parcel;

(c) the assessed value of each parcel within said district;

(d) the square footage of each parcel within said district as it relates to the whole;

(e) the square footage of floorspace in any improvements on the parcel and the various uses of such floorspace;

(f) the availability of existing on-site parking space on any parcel of land within the district.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part).

7-12-4166. Land fronting excepted work not subject to assessment. The lots or portions of lots fronting upon excepted work referred to in 7-12-4117, already done, shall not be included in the assessment for the class of work from which the exception is made, provided that this shall not be construed so as to affect the special provisions as to grading contained in 7-12-4167.

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R.C.M. 1921; re-en. Sec. 5227, R.C.M. 1935; amd. Sec. 1, Ch. 261, L. 1959; R.C.M. 1947, 11-2204(4).

7-12-4167. Provision for grading street by owner of abutting property. (1) It shall be lawful for the owner or owners of the lots or land fronting upon any street the width and grade of which shall have been established by the city council or commission to perform, at his or their own expense (after obtaining permission from the council or commission to do so but before said council or commission has passed its resolution of intention to order grading exclusive of this), any grading upon said street, to its full width or to the centerline thereof and to its grade, as then established, and thereupon to procure, at his or their own expense, a certificate from the city engineer setting forth the number of cubic yards of cutting and filling made by him or them in such grading and proportions performed by each owner and that the same is done to establish width and grade of said street or to the centerline thereof and thereafter to file said certificate with the city engineer. The engineer shall record the certificate in a properly indexed book kept for that purpose in his office.

(2) (a) Thereafter, whenever the council or commission orders the grading of said street or any portion thereof on which any grading, certified as provided in subsection (1), has been done, the bids and contracts must express the price by the cubic yard for cutting and filling in grading. The owner or owners and his or their successors in interest shall be entitled to credit on the assessment upon his or their lots and lands fronting on said street for the grading thereof to the amount of the cubic yards of cutting and filling set forth in his or their certificate, at the prices named in the contract for said cutting and filling or, if the grade meanwhile has been duly altered, only for so much of said certified work as would be required for grading to the altered grade. Such owner or owners shall not be entitled to such credit as may be in excess of the assessments for grading upon the lots and lands owned by him or them and proportionately assessed for the whole of said grading.

(b) The city clerk shall include in the assessment, for the whole of said grading upon the same grade, the number of cubic yards of cutting and filling set forth in any and all certificates so recorded in his office, or for the whole of said grading to the duly altered grade, so much of said certified work as would be required for grading thereto and shall enter corresponding credits, deducting the same as payments upon the amounts assessed against the lots and land owned, respectively, by said certified owners and their successors in interest; provided, however, that he shall not so include any grading quantities or credit any sums in excess of the proportionate assessments for the whole of the grading which are made upon any lots and lands fronting upon said street and belonging to any such certified owners or their successors in interest.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(4), (5).

7-12-4168. Provision for work other than grading done by owner of property. Whenever any owner or owners of any lots and lands fronting on any street shall have heretofore done or shall hereafter do any work (excepting grading) on such street in front of any block at his or their own expense and the city council or commission shall subsequently order any work to be done of the same class in front of the same block, said work so done at the expense of such owner or owners shall be excepted from the order ordering work to be done, provided that the work so done at the expense of such owner or owners shall be upon the official grade and in condition satisfactory to the city engineer at the time said order is passed.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971 amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(6).

7-12-4169. Incidental expenses considered as cost of improvements. (1) The costs and expenses connected with and incidental to the formation of any special improvement district, including costs of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection; and preparation of assessment rolls shall be considered a part of the cost and expenses of making the improvements within such special improvement district.

(2) The costs of any improvement may, at the option of the municipal governing body, include an amount not to exceed 5% of the principal amount of any bonds or warrants to be issued, which shall be deposited in the revolving fund created in 7-12-4221.

History: En. Sec. 22, Ch. 89, L. 1913; re-en. Sec. 5246, R.C.M. 1921; re-en. Sec. 5246, R.C.M. 1935; R.C.M. 1947, 11-2228(part); amd. Sec. 1, Ch. 435, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

7-12-4170. Payment of damages incurred as a result of improvements. Whenever the owner or anyone interested in any property situated within any special improvement district, after filing with the clerk a written notice claiming that his property has been damaged, is awarded or recovers any amount because of damages sustained by the property because of the construction of any improvement in the special improvement district:

(1) if the resolution levying the assessment to defray the cost of making the improvement in the district is not passed and adopted by the city council, the amount to be recovered shall be added to and constitute a part of the cost of making the improvement; but

(2) if the resolution levying the assessment to defray the costs and expenses of making the improvement has been passed and adopted by the council, it shall pass and adopt a supplemental resolution levying additional assessments against all the property in the district for the purpose of paying the amount awarded and the supplemental resolution shall be made in the same manner and prepared and certified the same as the original resolution levying the assessment to defray the cost of making the improvement.

History: En. Sec. 19, Ch. 89, L. 1913; re-en. Sec. 5243, R.C.M. 1921; re-en. Sec. 5243, R.C.M. 1935; R.C.M. 1947, 11-2225; amd. Sec. 9, Ch. 251, L. 1979.

7-12-4171. Treatment of corner lots for purposes of assessment. For the purposes of special assessments levied against property as provided in this part through part 45, when assessments for improvements on both sides of a corner lot are determined in proportion to the lineal footage, the frontage of a corner lot in a platted block is the average of the two abutting sides.

History: En. 11-2289 by Sec. 1, Ch. 404, L. 1977; R.C.M. 1947, 11-2289.

7-12-4172. Allocation of costs of nonfrontage sides. The governing body shall allocate to all lots in the special improvement district a proportionate share of the costs according to the lineal feet assigned to each lot.

History: En. 11-2290 by Sec. 2, Ch. 404, L. 1977; R.C.M. 1947, 11-2290.

7-12-4173. Status of federal property within improvement district. Whenever any lot, piece, or parcel of land belonging to the United

States or mandatory of the government shall front upon the proposed work or improvement or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement. The cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the city from its general fund.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(3).

7-12-4174. Inclusion and assessment of unplatted, undedicated, or unsurveyed land in improvement district. Whenever any unplatted, undedicated, or unsurveyed lot, piece, or parcel of land that separates one platted part of the city from another platted part of said city, lying wholly within the boundaries of any city or town and except land owned by the United States, shall abut or border upon any special improvement district or be included within the boundaries of any special improvement district of such city or town, the city of town council may cause the same to be included within and made a part of such special improvement district in the same manner as other property within such special improvement district and may assess the same for its proportionate share of the cost of making or maintaining such improvements in the same manner as other property within such special improvement district.

History: En. Sec. 1, Ch. 16, L. 1923; re-en. Sec. 5238.1, R.C.M. 1935; R.C.M. 1947, 11-2215.

7-12-4175. Offstreet parking option — ordinance setting forth method of assessment required — hearing. (1) Before any improvement district for the establishment or improvement of offstreet parking can be created or financed under 7-12-4165, the city council or commission must, prior to the creation of the district, pass a city ordinance setting forth the formula to be used in determining the assessment of each lot or parcel within the district. The formula must include but is not limited to the items to be considered in 7-12-4165.

(2) Prior to the adoption of any such ordinance, the council or commission shall make a determination of the formula for the method of assessment, considering all of the factors above set forth. A public hearing, after due notice, shall be held wherein concerned persons may present their objections to the formula or any part of it and point out errors and inequities and submit reasons for amendments and corrections. The council may continue the hearing from time to time.

(3) After the council has heard all objections and suggestions, it shall correct any errors which it finds in the formula for assessment as originally made and shall finally establish and settle the formula for assessment in the same manner as any other city ordinance.

History: En. Sec. 14, Ch. 89, L. 1913; re-en. Sec. 5238, R.C.M. 1921; amd. Sec. 1, Ch. 163, L. 1925; re-en. Sec. 5238, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1955; amd. Sec. 1, Ch. 330, L. 1971; amd. Sec. 1, Ch. 85, L. 1973; R.C.M. 1947, 11-2214(part); amd. Sec. 34, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "for the establishment or improvement of offstreet parking" in (1); deleted "the provisions of 7-12-4161 through" before "7-12-4165" in (1); substituted "in" for "as set forth in 7-12-4161 through" before "7-12-4165" in (1); deleted "by the council or commission" after "ordinance" in (2); deleted "as set forth above" after "assessment" in (2); made minor changes in grammar and phraseology.

7-12-4176. Resolution for tax levy upon district property. (1) To defray the cost of making improvements in any special improvement district or of acquiring property for opening, widening, or extending any street or alley or to defray the cost and expense of changing any grade of any street, avenue, or alley, the city council shall by resolution levy and assess a tax upon all property in any district created for such purpose, using for a basis for assessment one of the methods set forth in 7-12-4161 through 7-12-4165.

(2) Such resolutions shall contain a description of each lot and parcel of land, with the name of the owner, if known, the amount of each partial payment to be made, and the day when the same shall become delinquent.

(3) Such resolution, signed by the mayor and clerk, shall be kept on file in the office of the city clerk.

History: (1), (2)En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915; re-en. Sec. 5240, R.C.M. 1921; re-en. Sec. 5240, R.C.M. 1935; Sec. 11-2222, R.C.M. 1947; (3)En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; Sec. 11-2223, R.C.M. 1947; R.C.M. 1947, 11-2222(part), 11-2223(part).

7-12-4177. Notice of resolution for tax levy — protest and hearing. (1) A notice signed by the city clerk, stating that the resolution levying the special assessment to defray the cost of such improvements is on file in his office and subject to inspection for a period of 5 days, shall be published at least once in a newspaper published in the city or town.

(2) Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the council. The time for such hearing shall not be less than 5 days after the publication of such notice.

History: En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; R.C.M. 1947, 11-2223(part).

7-12-4178. Hearing on resolution for tax levy. (1) At the time so fixed, the council shall meet and hear all such objections and for that purpose may adjourn from day to day.

(2) The council may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer within 2 days after its passage.

History: En. Sec. 17, Ch. 89, L. 1913; re-en. Sec. 5241, R.C.M. 1921; re-en. Sec. 5241, R.C.M. 1935; R.C.M. 1947, 11-2223(part).

7-12-4179. Payment of maintenance costs — resolution for assessment. (1) The cost of maintaining the improvements shall be paid by assessing the entire district under a permissible assessment option as provided in 7-12-4162 through 7-12-4165.

(2) It is the duty of the council to estimate, as nearly as practicable, the cost of maintaining the improvements in each district for the season. Before the first Monday in September of each year, the council shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining the improvements within the several districts.

(3) The resolution levying assessments to defray the cost of maintenance of the improvement shall be prepared and certified in the same manner as a resolution levying assessments for making improvements in the special improvement district.

(4) The council may change by resolution, not more than once a year, the boundaries of any maintenance district, but the change of boundaries may not affect indebtedness existing at the time of the change.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part); amd. Sec. 10, Ch. 251, L. 1979.

7-12-4180. Improvement district maintenance fund. The money collected from the assessment provided for in 7-12-4179 shall be paid into a fund known as special improvement district No. .... maintenance fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated.

History: En. Sec. 18, Ch. 89, L. 1913; re-en. Sec. 5242, R.C.M. 1921; re-en. Sec. 5242, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1943; R.C.M. 1947, 11-2224(part).

7-12-4181. Collection of district assessments by county clerk — certification. (1) Except as provided in 7-12-4183, in every city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of 7-6-4407 immediately after the second Monday of August of each year, it shall be the duty of the city treasurer or town clerk to certify, at the same time the copy of the resolution determining the annual levy for general taxes is certified by the city or town clerk to the county clerk as required by 7-6-4407, to the county assessor of the county in which such city or town is situated all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42.

(2) The county assessor shall thereupon enter same upon the assessment roll of the county. The county treasurer must collect all such taxes and assessments in the same manner and at the same time as said taxes for general, municipal, and administrative purposes are collected by him.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1945; R.C.M. 1947, 11-2233.

7-12-4182. Collection of district assessments by city treasurer in cities collecting their own taxes — delinquencies. (1) In every city or town which shall provide by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, such city treasurer or town clerk shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42 in the same manner and at the same time as said taxes for general, municipal, and administrative purposes are collected by him. All of the provisions of 7-6-4423 shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes.

(2) When one payment becomes delinquent, all payments shall, at the option of the city or town council and by appropriate resolutions duly

adopted, become delinquent and the whole property shall be sold the same as other property is sold for taxes.

History: En. Sec. 27, Ch. 89, L. 1913; amd. Sec. 1, Ch. 166, L. 1921; re-en. Sec. 5251, R.C.M. 1921; amd. Sec. 1, Ch. 156, L. 1925; amd. Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.1, R.C.M. 1935; R.C.M. 1947, 11-2234.

7-12-4183. Collection of district assessments by city treasurer in cities where county collects taxes. (1) In any city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of 7-6-4407 and 7-6-4423, the city or town may, nevertheless, provide by ordinance for the collection by its city treasurer or town clerk of all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42 in the same manner and at the same time as said taxes for general, municipal, and administrative purposes are collected by the county treasurer. All of the provisions of 7-6-4423 shall apply to the collection of such special taxes and assessments in the same manner as such provisions apply to the collection of other city or town taxes.

(2) When the payment of any one installment of any special assessment becomes delinquent, all payments of subsequent installments shall, at the option of the city or town council and by appropriate resolution duly adopted, become delinquent. Such delinquent special assessments shall be certified to the county clerk of the county in which such city or town is situated, and the county treasurer must collect such delinquent special assessments and taxes in the same manner and at the same time as said taxes for general, municipal, and administrative purposes are collected by him. In case the same are not paid, the whole property shall be sold, the same as other property is sold for taxes.

History: En. Subd. (c), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.2, R.C.M. 1935; R.C.M. 1947, 11-2235.

7-12-4184. Reinstatement of delinquent assessment. (1) Whenever any special assessment or installment is delinquent, is declared to be delinquent by appropriate resolution of the city or town council, and is certified to the county clerk and county treasurer for collection as herein provided, the city or town council may, nevertheless, at its option, by appropriate resolution, order the delinquent assessment to be withdrawn from the county treasurer, canceled from his records and proceedings, and reinstated in the office of the city treasurer and on the assessment book thereof upon the payment to the city treasurer of the assessment or the installment and interest up to date.

(2) The certified copy of the resolution of the council with reference to such payment, withdrawal, and reinstatement, filed with the county treasurer, is authority for the county treasurer to cancel and withdraw the delinquent special assessment or installment.

(3) The withdrawal and reinstatement may be made at any time before or after sale of the property for delinquent taxes and before a tax deed therefor is executed.

History: En. Subd. (e), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.4, R.C.M. 1935; R.C.M. 1947, 11-2237; amd. Sec. 11, Ch. 251, L. 1979.

7-12-4185. Payment of tax under protest — action to recover. (1) When any tax levied and assessed under any of the provisions of this part and part 42 is deemed unlawful by the party whose property is thus taxed or from whom such tax is demanded, such person may pay such tax or any part thereof deemed unlawful under protest to the city or county treasurer, as the case may be.

(2) Thereupon, such party so paying or his legal representative may bring an action in any court of competent jurisdiction against the officer to whom such tax was paid or against the city in whose behalf the same was collected to recover such tax or any portion thereof so paid under protest. Any action instituted to recover any tax paid under protest must be commenced within 60 days after the date of payment thereof.

(3) The tax so paid under protest shall be held by the city or county treasurer, as the case may be, until the determination of any action brought for the recovery thereof.

History: En. Sec. 29, Ch. 89, L. 1913; re-en. Sec. 5253, R.C.M. 1921; re-en. Sec. 5253, R.C.M. 1935; R.C.M. 1947, 11-2239.

7-12-4186. Procedure to correct assessment and relevy and collect tax. (1) Whenever, by reason of any alleged nonconformity to any law or ordinance or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the council may make all necessary orders and ordinances and may take all necessary steps to correct the same and to reassess and relevy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance, or resolution relating thereto. The council may reassess and relevy the same with the same force and effect as an original levy.

(2) Whenever any apportionment or assessment is made and any property is assessed too little or too much, the same may be corrected and reassessed for such additional amount as may be proper or the assessment may be reduced even to the extent of refunding the tax collected.

(3) Any special tax upon reassessment or relevy shall, so far as is practicable, be levied and collected as the same would have been if the first levy had been enforced. Any provisions of any law or ordinance specifying a time when or order in which acts shall be done in a proceeding which may result in a special tax shall be taken to be subject to the qualifications of this part or part 42.

History: En. Sec. 28, Ch. 89, L. 1913; re-en. Sec. 5252, R.C.M. 1921; re-en. Sec. 5252, R.C.M. 1935; R.C.M. 1947, 11-2238(part).

7-12-4187. Certain errors not to invalidate assessments and liens. (1) When, under any of the provisions of this part or part 42, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

(2) Any mistake in the description of the property or the name of the owner shall not vitiate any liens created by this part or part 42 unless it is impossible to identify the property from the description.

History: (1)En. Sec. 24, Ch. 89,L. 1913; re-en. Sec. 5248, R.C.M. 1921; re-en. Sec. 5248, R.C.M. 1935; Sec. 11-2230, R.C.M. 1947; (2)En. Sec. 30, Ch. 89, L. 1913; re-en. Sec. 5254, R.C.M. 1921; re-en. Sec. 5254, R.C.M. 1935; Sec. 11-2240, R.C.M. 1947; R.C.M. 1947, 11-2230, 11-2240.

7-12-4188. Due date for district assessments. (1) All special assessments or installments of special assessments in cities and towns, duly and regularly levied by resolution according to law, shall be payable on or before 5 p.m. on November 30 of each year except as provided in subsection (2).

(2) The governing body of a municipality may provide by resolution that one-half of the payment on special assessments or installments of special assessments may be deferred to no later than 5 p.m. on May 31 of the following year.

(3) In the event the same are not paid on or before said date, the same shall be subject to the same interest and penalties for nonpayment as delinquent property taxes under 15-16-102.

History: En. Subd. (d), Sec. 5251, R.C.M. 1921 by Sec. 1, Ch. 78, L. 1929; re-en. Sec. 5251.3, R.C.M. 1935; R.C.M. 1947, 11-2236; amd. Sec. 1, Ch. 165, L. 1979; amd. Sec. 1, Ch. 527, L. 1981.

Compiler's Comments

1981 Amendment: Changed the time of payment from "6" to "5" p.m. in (1); substituted for the phrase "delinquent property taxes under 15-16-102." for "are or may hereafter be provided by the laws of Montana for other" after "nonpayment as" at the end of (3).

Effective Date: Sec. 5, Ch. 165, L. 1979, provided: "This act is effective on passage and approval." Approved March 20, 1979.

7-12-4189. Simple interest on assessments. (1) Upon all special assessments and taxes levied and assessed in accordance with any of the provisions of this part, simple interest shall be charged.

(2) The treasurer, in collecting such special assessment taxes if the same are payable in one installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessment. If such assessment be payable in installments, the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid.

History: En. Sec. 21, Ch. 89, L. 1913; re-en. Sec. 5245, R.C.M. 1921; re-en. Sec. 5245, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1937; amd. Sec. 16, Ch. 234, L. 1971; R.C.M. 1947, 11-2227.

7-12-4190. Payment of assessments in installments. The payment of assessments to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed 20 years, payments to be made in equal annual installments.

History: En. Sec. 16, Ch. 89, L. 1913; amd. Sec. 7, Ch. 142, L. 1915; re-en. Sec. 5240, R.C.M. 1921; re-en. Sec. 5240, R.C.M. 1935; R.C.M. 1947, 11-2222(part).

7-12-4191. Assessments and certain other charges as liens. Any special assessment made and levied to defray the cost and expense of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied from and after the date of the passage of the resolution levying such assessment. The lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

History: En. Sec. 23, Ch. 89, L. 1913; re-en. Sec. 5247, R.C.M. 1921; re-en. Sec. 5247, R.C.M. 1935; R.C.M. 1947, 11-2229.

Part 42

Special Improvement Districts Continued

7-12-4201. Use of bonds and warrants. All costs and expenses incurred in the construction of any improvements specified in part 41 in any improvement district shall be paid for by special improvement district bonds or warrants. The city or town council shall provide for making payments for improvements in any special improvement district by the method provided in 7-12-4204 and 7-12-4205.

History: Ap. p. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; Sec. 11-2231, R.C.M. 1947; Ap. p. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; Sec. 11-2232, R.C.M. 1947; R.C.M. 1947, 11-2231(part), 11-2232(part).

7-12-4202. Form of bond or warrant. Such bonds or warrants shall be drawn in substantially the following form:

District No. ....
United States of America
State of Montana
Warrant or Dollars
(Bond No. ....) $........
Interest at the rate of ....% per annum, payable annually (or semiannually).

Special Improvement District Coupon Warrant or Bond
...., Montana
Issued by the city of ...., Montana

The treasurer of the city of ...., Montana, will pay to bearer the sum of .... dollars as authorized by resolution No. .... as passed on the .... day of ...., 19.., creating special improvement district No. .... for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of ...., Montana.

This warrant (or bond) bears interest at the rate of ....% per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable annually (or semiannually) on the first day of .... in each year (and on the first day of .... in each year), commencing .... 1, 19.., unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to, and is not a general obligation of the city.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof and in the manner provided for the redemption of the same.

It is hereby certified and recited that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolutions and ordinances of the city of ...., Montana, relating to the issuance thereof.

(SEAL)
Dated at ...., Montana, this .... day of ...., 19...
City of ...., Montana

By: ....
Mayor

....
City Clerk

Registered at the office of the city treasurer of ...., Montana, this .... day of ...., 19...

....
City Treasurer

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 3, Ch. 165, L. 1979; amd. Sec. 4, Ch. 308, L. 1981; amd. Sec. 2, Ch. 527, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 308 inserted "and is not a general obligation of the city" after "hereinbefore referred to" in the middle of the section.

Chapter 527 inserted "annually" after "payable" near the middle of the suggested form, and after "payable" in the portion of the form dealing with interest on warrants; inserted "commencing ... 1, 19..," after "in each year)," near the end of the third paragraph; and made minor changes in phraseology.

Effective Date: Sec. 5, Ch. 165, L. 1979, provided: "This act is effective on passage and approval." Approved March 20, 1979.

7-12-4203. Details relating to special improvement district bonds and warrants. (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable annually or semiannually, at the discretion of the governing body of the municipality, on such dates as the governing body prescribes. Such warrants (or bonds) shall bear the signatures of the mayor and clerk and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk.

(2) Said bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period not to exceed 20 years.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 4, Ch. 165, L. 1979; amd. Sec. 3, Ch. 527, L. 1981.

Compiler's Comments

1981 Amendment: Changed the payment of interest period to be annually or semiannually at the discretion of the municipality on such dates as it prescribes, instead of on specified dates unless the muncipality decided otherwise.

Effective date: Sec. 5, Ch. 165, L. 1979, provided: "This act is effective on passage and approval." Approved March 20, 1979.

7-12-4204. Procedure to issue bonds and warrants. (1) The city or town council shall sell bonds or warrants issued under the provisions of 7-12-4201, in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district, to the highest and best bidder therefor for cash and for not less than the face value of such bonds or warrants, including interest thereon.

(2) The provisions of 7-7-4251 through 7-7-4254 with regard to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as the same are applicable thereto and not in conflict with the provisions of this section and 7-12-4205, shall apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling such bonds or warrants.

History: En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; R.C.M. 1947, 11-2232(part).

7-12-4205. Disposition of bond or warrant proceeds. The city or town council shall use the proceeds of such sale in making payment to the contractor or contractors. Such payment may be made either from time to time, on estimates made by the engineer in charge of such improvements for the city or town, or upon the entire completion of the improvements and the acceptance thereof by the city or town council.

History: En. Sec. 26, Ch. 89, L. 1913; re-en. Sec. 5250, R.C.M. 1921; amd. Sec. 1, Ch. 46, L. 1927; re-en. Sec. 5250, R.C.M. 1935; amd. Sec. 1, Ch. 178, L. 1945; R.C.M. 1947, 11-2232(part).

7-12-4206. Redemption of bonds and warrants. (1) The warrants or bonds shall be redeemed by the treasurer when there is money in the special improvement district fund against which the warrants or bonds are drawn, on presentation of the coupons belonging thereto, and any money remaining shall be applied to the payment of the principal and the redemption of the warrants or bonds in the order of their registration.

(2) Whenever there is any money in any special improvement district fund after paying the interest on the warrants or bonds drawn against the fund, the treasurer shall call in for payment outstanding warrants or bonds which, together with the interest thereon to the date of redemption, will equal the amount of the fund on that date. The date of redemption shall be fixed by the treasurer and may not be less than 10 days after the date of publication or of service of notice, and on the date so fixed, interest ceases. The treasurer shall give notice by publication once in a newspaper published in the city or, at the option of the treasurer, by written notice to the holders of the warrants or bonds, if their addresses are known, of the number of warrants or bonds and the date on which payment will be made.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R.C.M. 1921; re-en. Sec. 5249, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959; amd. Sec. 17, Ch. 234, L. 1971; R.C.M. 1947, 11-2231(part); amd. Sec. 12, Ch. 251, L. 1979.

7-12-4207. Investment of interest and sinking fund money. (1) The governing body of a city in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank insured by the federal deposit insurance corporation or in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn.

History: En. Sec. 1, Ch. 45, L. 1965; R.C.M. 1947, 11-2288(part).

7-12-4208 through 7-12-4220 reserved.

7-12-4221. Creation of special improvement district revolving fund. The council or commission of any city or town which has heretofore created or may hereafter create any special improvement district or districts for any purpose may in its discretion as to such district or districts created prior to February 25, 1929, and shall as to such district or districts created after February 25, 1929, create, establish, and maintain by ordinance a fund to be known and designated as the special improvement district revolving fund in order to secure prompt payment of any special improvement district bonds or sidewalk, curb, and alley approach warrants issued in payment of improvements made therein and the interest thereon as it becomes due.

History: En. Sec. 1, Ch. 24, L. 1929; re-en. Sec. 5277.1, R.C.M. 1935; amd. Sec. 1, Ch. 255, L. 1971; R.C.M. 1947, 11-2269.

7-12-4222. Sources of money for revolving fund. (1) For the purpose of providing funds for such revolving fund the city or town council:

(a) (i) may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the city or town such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered and shall be loans from such general fund to the revolving fund; and

(ii) may include in the cost of the improvement to be defrayed from the proceeds of the bonds or warrants an amount up to 5% of the principal amount of the bonds or warrants and deposit it in the revolving fund upon receipt of such proceeds; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund. However, a tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding special improvement district bonds and warrants. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding special improvement district bonds and warrants.

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-4223 shall by order of the council be transferred to the revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants have been fully paid, all money remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund.

History: En. Secs. 2, 4, Ch. 24, L. 1929; re-en. Secs. 5277.2, 5277.4, R.C.M. 1935; amd. Secs. 2, 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2270, 11-2272(part); amd. Sec. 5, Ch. 308, L. 1981; amd. Sec. 2, Ch. 435, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 308 substituted the last two sentences of (1)(b) for "such levy, together with such transfer, not to exceed in any one year 5% of the principal amount of the then-outstanding special improvement district bonds or sidewalk, curb, and alley approach warrants".

Chapter 435 inserted subsection (1)(a)(ii).

7-12-4223. Loans from revolving fund to meet payments on bonds and warrants. Whenever any special improvement district bond or sidewalk, curb, and alley approach warrants or any interest thereon shall be due and payable and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund. Thereupon, such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

History: En. Sec. 3, Ch. 24, L. 1929; re-en. Sec. 5277.3, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971; R.C.M. 1947, 11-2271(1).

7-12-4224. Lien arising due to loan from revolving fund. Whenever any loan is made to any special improvement district fund or sidewalk, curb, and alley approach warrants from the revolving fund, the revolving fund shall have a lien therefor on all unpaid assessments and installments of assessments on such district (whether delinquent or not) and on all money thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond or warrant for payment of which, or of interest thereon, such loan was made.

History: En. Sec. 4, Ch. 24, L. 1929; re-en. Sec. 5277.4, R.C.M. 1935; amd. Sec. 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2272(part).

7-12-4225. Covenants to utilize revolving fund. (1) In connection with any public offering of special improvement district bonds or sidewalk, curb, and alley approach warrants, the city or town council may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available;

(b) to provide funds for such revolving fund pursuant to the provisions of 7-12-4222(1) by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the city or town council may so agree to and undertake, subject to the maximum limitations imposed by 7-12-4222(1).

(2) The undertakings and agreements referred to in subsection (1) shall be binding upon said city or town so long as any of said special improvement district bonds or sidewalk, curb, and alley approach warrants so offered or any interest thereon remain unpaid.

History: En. Sec. 3, Ch. 24, L. 1929; re-en. Sec. 5277.3, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1945; amd. Sec. 17, Ch. 158, L. 1971; amd. Sec. 3, Ch. 255, L. 1971; R.C.M. 1947, 11-2271(2).

7-12-4226. Investment of surplus reserves. Surplus reserves not needed for immediate use may from time to time be invested in securities of the United States or certificates of deposit approved by the city council. The interest earned from such investments shall be placed to the credit of the revolving fund.

History: En. Sec. 4, Ch. 24, L. 1929; re-en. Sec. 5277.4, R.C.M. 1935; amd. Sec. 4, Ch. 255, L. 1971; R.C.M. 1947, 11-2272(part).

7-12-4227. Utilization of excess money in revolving fund. Whenever there is an amount in the revolving fund in excess of the amount deposited in the revolving fund under 7-12-4169(2) and in excess of 5% of the outstanding special improvement district bonds and warrants and the council considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants or interest thereon, the council may:

(1) by vote of all of its members at a meeting called for that purpose, order the amount of the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants or interest thereon or any part thereof transferred to the general fund of such city or town; or

(2) use the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants or interest thereon or any part thereof for the purchase of property at sales for delinquent taxes or assessments, or both, or property which may have been struck off or sold to the county for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessment for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city or town.

History: En. Sec. 5. Ch. 24, L. 1929; re-en. Sec. 5277.5, R.C.M. 1935; R.C.M. 1947, 11-2273(part); amd. Sec. 6, Ch. 308, L. 1981; amd. Sec. 3, Ch. 435, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 308 substituted "5% of the outstanding special improvement district bonds and warrants and the council considers any part of the excess to be greater than the amount" for "the amount which the council deems" after "in excess of" in the first sentence; substituted "the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants or interest thereon" for "such excess" in (1) and (2); inserted "amount of the" before "excess" in (1).

Chapter 435 inserted "deposited in the revolving fund under 7-12-4169(2) and in excess of the amount" after "excess of the amount" in the first sentence of the section.

7-12-4228. Disposition of tax certificates and tax-sale property. (1) The council may sell any tax certificates issued on any sale or sales referred to in 7-12-4227(2). After acquiring title to property referred to in 7-12-4227, the city or town may lease such property, sell the same at public or private sale and make conveyance thereof, or otherwise dispose thereof as the interest of the city or town may require.

(2) All proceeds from such sales of tax certificates and from such leasing, sale, or other disposition of the property shall belong to and be paid into the revolving fund and be subject to transfer in whole or in part to the general fund by the vote of all the members of the council at a meeting called for that purpose as hereinbefore provided.

History: En. Sec. 5. Ch. 24, L. 1929; re-en. Sec. 5277.5, R.C.M. 1935; R.C.M. 1947, 11-2273(part).

7-12-4229. Disposal of funds deposited in revolving fund. Any funds without interest deposited in the revolving fund under 7-12-4169(2) less the amount of any loan to the district fund not repaid may be returned to the owners of record of the property of the district in direct proportion of the original assessment on each piece of property, or as an alternative a municipality may transfer the funds placed in the revolving fund as a result of 7-12-4169(2) to the general fund after the final payment of the district's bonds or warrants is paid.

History: **En. Sec. 4, Ch. 435, L. 1981.**

7-12-4230 through 7-12-4240 reserved.

7-12-4241. Creation of supplemental revolving fund from parking meter revenue. Subject to the provisions of 7-12-4242, a city or town may create, establish, and maintain a supplemental revolving fund out of the net revenues of parking meters to secure prompt payment of principal of and interest on special improvement district bonds issued under the provisions of 7-12-4241 through 7-12-4258 for improvements undertaken pursuant to this part and part 41 for the following purposes: for paving, repaving, macadamizing, remacadamizing, surfacing, resurfacing, oiling, reoiling, graveling, regraveling, piling, repiling, capping, recapping, grading, or regrading one or more streets, alleys, avenues, or other public places or ways in said city or town and/or constructing therein curbs or gutters or for the opening or widening of any street, avenue, alley, or other public way.

History: **En. Sec. 1, Ch. 260, L. 1947; R.C.M. 1947, 11-2274(part).**

7-12-4242. Application of provisions relating to supplemental revolving fund. The provisions of 7-12-4241 through 7-12-4258 shall not be applicable to any improvement unless the council shall find that 80% or more in area of the total parcels to be assessed for such improvement have been improved by the erection of permanent buildings or structures thereon having a value greater than the value of such parcels without such improvements according to the last assessment roll.

History: **En. Sec. 1, Ch. 260, L. 1947; R.C.M. 1947, 11-2274(part).**

7-12-4243. Procedure to create and maintain supplemental revolving fund. (1) (a) A supplemental revolving fund may be created by ordinance, subject to the approval of a majority of the qualified electors voting upon the question at a general or special election.

(b) As used in 7-12-4241 through 7-12-4258, "qualified electors" shall mean registered electors of the municipality.

(2) The supplemental revolving fund shall be created and maintained solely from the net revenues of parking meters. The ordinance may pledge to said fund all or any part of the net revenues of parking meters which may be then owned or leased or rented or thereafter acquired by the city or town. Said ordinance shall contain such provisions in respect to the purchase, control, operation, repair, and maintenance of parking meters, including rates to be charged, and the application of the net revenues therefrom and the management and use of the supplemental revolving fund as the council shall deem necessary.

History: **En. Sec. 2, Ch. 260, L. 1947; amd. Sec. 8, Ch. 158, L. 1971; R.C.M. 1947, 11-2275.**

7-12-4244. Issuance of bonds based upon supplemental revolving fund — election. (1) At any time after the award of the contract for any of the improvements described in 7-12-4241 and prior to the issuance of bonds or warrants therefor under the provisions of 7-12-4201 through 7-12-4203, the council may by resolution determine that such improvement is of a character that bonds may be issued under 7-12-4241 through 7-12-4258 in lieu of bonds under 7-12-4201 through 7-12-4203, and may submit to the qualified electors of the city or town the question whether such bonds shall be issued.

(2) The proposal to issue bonds may be submitted at the same election as the proposal to create the supplemental revolving fund and must be approved by a majority of the qualified electors voting on the question.

History: En. Sec. 3, Ch. 260, L. 1947; R.C.M. 1947, 11-2276.

7-12-4245. Resolution for issuance of bonds. (1) Whenever the council has been authorized to issue bonds under 7-12-4241 through 7-12-4258, the council may by resolution determine to issue such bonds and provide for the guaranty thereof by the supplemental revolving fund.

(2) Such resolution shall fix the amount, maturity, and interest rate and provide for the sale of bonds in such manner as the council shall determine.

(3) The resolution providing for the issuance of bonds may also contain such reasonable covenants for the protection of the holders thereof as the council may determine.

History: En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part).

7-12-4246. Determination of cost of improvements. The governing body of the municipality in determining the cost of said improvement may include estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; cost of the parking meters; and interest which it is estimated will accrue during the construction period and for 6 months thereafter on money borrowed or which it is estimated will be borrowed for the special improvements for which bonds are issued.

History: En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part).

7-12-4247. Details relating to bonds. (1) The bonds may mature at one time, not exceeding the maximum maturity of the assessments to be levied for said improvement, or may mature in installments at various times during the term of said assessments, but in no event shall such bonds mature beyond 10 years from date thereof.

(2) Said bonds, as the council shall determine, shall be subject to redemption prior to maturity and may be payable at any suitable bank or trust company either within or without the state of Montana.

(3) The bonds issued under 7-12-4241 through 7-12-4258 shall be in substantially the form provided in 7-12-4201 through 7-12-4203, as modified by the provisions of 7-12-4241 through 7-12-4258.

History: En. Sec. 4, Ch. 260, L. 1947; amd. Sec. 19, Ch. 234, L. 1971; R.C.M. 1947, 11-2277(part).

7-12-4248. Operation and use of supplemental revolving fund. (1) Money in the supplemental revolving fund shall first be loaned to the various district funds whose bonds are guaranteed under 7-12-4241 through 7-12-4258 to make up any deficiency in such funds.

(2) In event of any further deficiency in such funds, the money in the revolving fund created under 7-12-4221 through 7-12-4228 may be loaned to make good such deficiency pursuant to the provisions of those sections.

(3) In event that the deficit exceeds the money in the supplemental revolving fund, then the money in the revolving fund may be similarly loaned until the deficiency has been made good.

(4) The authorizing resolution may provide that bonds shall become due in accordance with a plan of redemption prior to the stated maturity date. Both revolving funds shall thereafter have concurrent liens on the unpaid assessments and the moneys in the improvement district fund for all such advances, provided that such advances shall not be returned so long as any principal or interest on bonds issued under 7-12-4241 through 7-12-4258 remains unpaid.

History: **En. Sec. 5, Ch. 260, L. 1947; R.C.M. 1947, 11-2278(part).**

7-12-4249. Meaning of term deficiency. A deficiency shall exist in any district fund whenever principal and interest is due and there is no money in the fund to pay the same.

History: **En. Sec. 5, Ch. 260, L. 1947; R.C.M. 1947, 11-2278(part).**

7-12-4250. Obligations of municipalities to bondholders. All agreements, conditions, covenants, or restrictions in the ordinance creating the supplemental revolving fund, in the resolution determining that the improvement is of a character for which bonds may be issued under 7-12-4241 through 7-12-4258, and in the resolution authorizing the issuance of bonds shall be binding upon the city or town and may not be thereafter altered or amended to the detriment of the rights of any bondholder so long as any of such bonds are outstanding.

History: **En. Sec. 6, Ch. 260, L. 1947; R.C.M. 1947, 11-2279(part).**

7-12-4251. Enforcement of bondholders' rights. The provisions of 7-12-4241 through 7-12-4258 and the rights granted under any ordinance or resolution enacted pursuant to these sections may be enforced by any bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

History: **En. Sec. 6, Ch. 260, L. 1947; R.C.M. 1947, 11-2279(part).**

7-12-4252. Judicial determination of validity of proceedings — petition. (1) Within 10 days after the adoption of the resolution providing for the issuance of bonds under 7-12-4241 through 7-12-4258, the council may file a petition in the district court of the judicial district wherein said city or town is located to determine the validity of the proceedings theretofore had relative to the issuance of said bonds, the creation of the supplemental revolving fund, and the levy of a special assessment.

(2) The petition shall set forth generally the facts in reference to the improvement, the creation of the supplemental revolving fund, and the issuance of bonds and shall have as exhibits thereto certified copies of the ordinances and resolutions and shall pray for confirmation of the proceedings and of the bond issue and the special assessments, if theretofore levied.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4253. Nature of court proceedings. The action provided for in 7-12-4252 shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested shall be had by notice given as provided in 7-12-4254.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4254. Hearing on petition — notice. (1) Upon the filing of said petition, the district court or any judge thereof shall fix the time for hearing on said petition, which shall not be less than 15 days from the date of filing the petition in said court.

(2) The district court or any judge thereof shall order the clerk of the court to give notice of the filing of said petition and the date of hearing thereon by publication at least once a week for 2 calendar weeks in a newspaper published or of general circulation in the county where the city or town is situated and also by posting a written or printed copy thereof in at least three public places in each voting precinct of said city or town, the date of first publication and posting to be not less than 15 days prior to the date fixed for hearing.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4255. Contents of notice of hearing — protest. (1) The notice shall state the substance of the petition and the time and place for hearing and that any interested person or any person whose rights may be affected by the issuance or sale of the bonds or the levy of the special assessment, may, on or before the day fixed for the hearing on the petition, answer the petition and may appear at the hearing and contest the granting of the prayer of the petition and the entry of any order of confirmation pursuant thereto.

(2) Any person eligible to appear may enter his appearance in the proceedings and answer the petition and contest the granting of the prayer of the petition, and all provisions of the code of civil procedure shall be applicable to the proceedings.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part); amd. Sec. 13, Ch. 251, L. 1979.**

7-12-4256. Decision of district court. (1) If upon the hearing the court shall find and determine that the requirements of 7-12-4241 through 7-12-4258 have been complied with and notice of the hearing duly given as required by law, it shall have power to examine and determine the regularity, legality, and validity of the proceedings relative to the issuance of the bonds and the levy of special assessments and the legality and validity of the bonds and the special assessment and may ratify, approve, and confirm the proceedings in whole or in part and enter its judgment or decree accordingly.

(2) If no appeal pursuant to 7-12-4257 is taken within the time provided for in 7-12-4257 or if the judgment or decree of the district court be affirmed upon such appeal, such judgment or decree shall be forever conclusive upon all the world as to the validity of the bonds and the special assessment, and the same shall never be called into question in any court of the state.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4257. Appeal from district court to supreme court. From any judgment or decree entered under 7-12-4256, an appeal may be taken to the supreme court at any time within 10 days from the entry of such judgment in the manner prescribed by the code of civil procedure governing appeals from the district court to the supreme court.

History: **En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part).**

7-12-4258. Cost of court proceedings. The cost of the court proceedings may be apportioned between the parties at the discretion of the court.

History: En. Sec. 7, Ch. 260, L. 1947; R.C.M. 1947, 11-2280(part); amd. Sec. 14, Ch. 251, L. 1979.

Part 43

Special Provisions for Special Improvement Lighting Districts

7-12-4301. Special improvement districts for lighting streets authorized. (1) The council of any city or town is authorized to:

(a) create special improvement districts embracing any street or streets or public highway therein or portions thereof and property adjacent thereto or property which may be declared by said council to be benefited by the improvement to be made for the purpose of lighting such street or streets or public highway;

(b) require that all or any portion of the cost of installing and maintaining such lighting system be paid by the owners of the property embraced within the boundaries of such districts; and

(c) assess and collect such portion of such cost by special assessment against said property.

(2) The governing body may create special lighting districts on any street or streets or public highway for the purpose of lighting them and assess the costs for installation and maintenance to property abutting thereto and collect the costs by special assessment against the property.

History: (1)En. Sec. 1, Ch. 143, L. 1915; re-en. Sec. 5259, R.C.M. 1921; amd. Sec. 1, Ch. 143, L. 1927; re-en. Sec. 5259, R.C.M. 1935; Sec. 11-2245, R.C.M. 1947; (2)En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; Sec. 11-2201, R.C.M. 1947; R.C.M. 1947, 11-2201(8), 11-2245; amd. Sec. 1, Ch. 521, L. 1981.

Compiler's Comments

1981 Amendment: Changed the allocation of the cost of the lighting system to the property owners from between one-fourth and three-fourths to all or any portion of the cost in (1)(b).

7-12-4302. Resolution of intention to create special improvement lighting district. (1) Before creating any special improvement lighting district in any such city or town for the purpose of lighting any street or streets or public highway or section thereof in accordance with the provisions of this part, the city council shall pass a resolution of intention to do so.

(2) The resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvement or improvements to be made and an approximate estimate of the cost thereof, an approximate estimate of the cost of maintaining such lights and supplying electrical current therefor for the first year, and the proportion of such cost to be assessed against the property embraced within the district.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(1).

7-12-4303. Notice of resolution of intent to create lighting district. (1) Upon having passed the resolution required by 7-12-4302, the council must give notice of the passage of such resolution of intention. The notice of the passage of such resolution must be published for 5 days in a daily newspaper or in some one issue of a weekly newspaper in the city or town or, in case no newspaper be published in such city or town, then by posting for 5 days in three public places in the city or town. A copy of such notice shall be mailed to every person, firm, or corporation having property within the proposed district, at his last-known address, upon the same day such notice is first published or posted.

(2) Such notice must describe the general character of the improvement so proposed to be made, state the estimated cost thereof and the estimated cost of maintaining the lights and supplying the electrical current therefor within such district for the first year, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvement or the creation of such district. Such notice shall refer to the resolution on file in the office of the city clerk for a description of the boundaries.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(2).

7-12-4304. Protest against creation of lighting district. At any time within 15 days after the date of the first publication of the notice of passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work or against the extent or creation of the district to be assessed, or both. Such notice must be in writing and be delivered to the clerk of the city council, who shall endorse thereon the date of its receipt by him.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(3).

7-12-4305. Consideration of protest. (1) At the next regular meeting of the city council after the expiration of the time within which said protests may be made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive. When the protest is against the proposed work and the cost thereof is to be assessed upon property embraced within the boundaries of the district and if the city council finds that such protest is made by the owners of a majority of the property embraced within the district to be assessed for the proposed work, no further proceedings shall be taken for a period of 6 months from the date when said protest was received by the city clerk of said city council.

(2) In determining whether or not sufficient protest has been filed in a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered the same as other property in the district.

(3) The city council may adjourn said hearing from time to time.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(4), (5).

7-12-4306. Resolution to create lighting district. When no protests have been delivered to the clerk of the city council within 15 days after the date of the first publication of the notice of the passage of the resolution of intention or when a protest shall have been found by the city council to be insufficient or shall have been overruled or when a protest against the extent of the proposed district shall have been heard and denied, immediately thereupon, the city council shall be deemed to have acquired jurisdiction to order the proposed improvements. Before ordering any of said proposed improvements, the city council shall pass a resolution creating the special improvement lighting district in accordance with the resolution of intention theretofore introduced and passed by the city council.

History: En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; R.C.M. 1947, 11-2247(6).

7-12-4307. Objections to irregular proceedings or manner of making improvements. (1) At any time within 60 days from the date of the award of any contract by a city or town council under the provisions of this part or at any time within 60 days from the date the council requires or instructs the street commissioner or any other official of the city or town to cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets of said city or town to be procured and erected, any owner or other person having any interest in any lot or land liable to assessment who claims that any of the previous acts or proceedings relating to said improvements are irregular, defective, erroneous, or faulty or that his property will be damaged by the making of any improvements in the manner contemplated may file with the city clerk a written notice specifying in what respect said acts or proceedings are irregular, defective, erroneous, or faulty or in what manner and to what extent his property will be damaged by the making of said improvements. The city clerk shall deliver the notice to the council.

(2) All objections to any act or proceeding or in relation to the making of said improvements not made in writing and in the manner at the time aforesaid and all claims for damage therefor shall be waived by such property owners, provided the notice of the passage of the resolution of intention has been actually published and the notices of improvements posted as provided in this part.

History: En. Sec. 3(a), Ch. 243, L. 1921; re-en. Sec. 5262, R.C.M. 1921; re-en. Sec. 5262, R.C.M. 1935; R.C.M. 1947, 11-2248.

7-12-4308. Operation of district. (1) The city or town council may:

(a) cause the posts, wires, pipes, conduits, lamps, or other suitable and necessary appliances for the purpose of lighting said streets to be procured and erected by contract, by the street commissioner, or by any other official of the city or town, in such way and manner as the council shall provide; and

(b) after such lighting system has been installed in such way and manner as the council shall elect, cause, by contract, the lights to be maintained thereon and electrical current furnished therefor.

(2) The posts in any such district shall be of uniform size and character and shall be distributed uniformly upon the street or streets or public highway or section thereof to be lighted in any such district.

(3) The lights in each district shall be maintained by contract for such period of time and in such way or manner as the city or town council shall elect. The council shall not let a contract for a period to exceed 3 years.

History: (1), (2)En. Sec. 3, Ch. 143, L. 1915; re-en. Sec. 5261, R.C.M. 1921; amd. Sec. 3, Ch. 143, L. 1927; re-en. Sec. 5261, R.C.M. 1935; Sec. 11-2247, R.C.M. 1947; (3)En. Sec. 7, Ch. 143, L. 1915;

re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; Sec. 11-2252, R.C.M. 1947; R.C.M. 1947, 11-2247(7), 11-2252(part).

7-12-4309. Record of expenses to be kept by city engineer. It shall be the duty of the city engineer to keep an account of all costs and expenses incurred in his office in connection with every special improvement district and certify the same to the city clerk.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part).

7-12-4310. Role of city clerk. It shall be the duty of the city clerk to prepare all necessary schedules and resolutions levying taxes and assessments in such special improvement districts.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part).

7-12-4311. Termination of special improvement lighting district. If at any time after the creation of any special improvement lighting district, a petition shall be presented to the city or town council, signed by the owners or agents of more than three-fourths of the total amount of property embraced within the district, asking that the maintenance and operation of such special lighting system and the furnishing of electrical current therefor in such district be discontinued, the city or town council shall by resolution, provide for discontinuing the maintenance and operation of the lighting system. If the council shall have, prior to the presentation of such petition, entered into any contract for the maintenance and operation of such lighting system, such maintenance and operation shall not be discontinued until after the expiration of the contract.

History: En. Sec. 10, Ch. 143, L. 1915; re-en. Sec. 5269, R.C.M. 1921; amd. Sec. 5, Ch. 143, L. 1927; re-en. Sec. 5269, R.C.M. 1935; R.C.M. 1947, 11-2255.

7-12-4312 through 7-12-4320 reserved.

7-12-4321. Apportionment of costs. The portion of the entire cost of erecting and maintaining the posts, wires, pipes, conduits, lamps, and other suitable or necessary appliances for the purpose of lighting said streets or public highways and of the annual cost of supplying electrical current for and maintaining the lights thereon in such districts, all or any portion as shall be determined by the city or town council, shall be borne by the property embraced within said district.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(part); amd. Sec. 2, Ch. 521, L. 1981.

Compiler's Comments

1981 Amendment: Changed the apportionment of costs to property owners from between one-fourth and three-fourths to all or any portion of the cost near the end of the section.

7-12-4322. Choice in manner of making assessments. The city or town council, for the purpose of making the assessment, shall adopt one of the methods specified in 7-12-4323 or 7-12-4324.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(part).

7-12-4323. Assessment of costs — area option. (1) The city council shall assess the entire cost of such improvement against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

(2) The council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(3) In order to apportion the cost of any of the improvements provided in this part between the corner lot and the inside lots of any block, the council may, in the resolution creating any district, provide that whenever any of the improvements provided in this part shall be along any side street or bordering or abutting upon the side of any corner lot of any block, the amount of the assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(a).

7-12-4324. Assessment of costs — frontage option. (1) The city council shall assess the cost of the improvements against the entire district, each lot or parcel of land within the district bordering or abutting upon the streets whereon or wherein the improvement has been made to bear costs in proportion to the lineal feet abutting or bordering the streets.

(2) The council, in its discretion, may pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

History: En. Sec. 2, Ch. 143, L. 1915; re-en. Sec. 5260, R.C.M. 1921; amd. Sec. 2, Ch. 143, L. 1927; re-en. Sec. 5260, R.C.M. 1935; R.C.M. 1947, 11-2246(b); amd. Sec. 15, Ch. 251, L. 1979.

7-12-4325. Incidental expenses considered as costs of improvements. The cost and expense connected with and incidental to the formation of any such district, including the cost of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection (including the compensation of the city engineer for work done by him); the cost of printing and advertising as provided in this part; and the preparation of assessment rolls shall be considered a part of the cost and expenses of making the improvements within such special improvement district.

History: En. Sec. 5, Ch. 143, L. 1915; re-en. Sec. 5264, R.C.M. 1921; re-en. Sec. 5264, R.C.M. 1935; R.C.M. 1947, 11-2250(part).

7-12-4326. Treatment of federal lands within lighting district. Whenever any lot, piece, or parcel of land belonging to the United States (or mandatory of the government) shall be included within the boundaries of the proposed special improvement lighting district declared by the city or town council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement. The cost of said work or improvement which would have been assessed against said lots shall be paid by the city from its general fund.

History: En. Sec. 12, Ch. 143, L. 1915; re-en. Sec. 5271, R.C.M. 1921; amd. Sec. 6, Ch. 143, L. 1927; re-en. Sec. 5271, R.C.M. 1935; R.C.M. 1947, 11-2257.

7-12-4327. Assessment of costs of lighting district to certain lands lying outside of municipality. The city or town council may make assessments in the manner provided in 7-12-4301 on property abutting the street or highway and lying outside the boundaries of the city or town, as long as that portion of the street or public highway to be lighted is adjacent to the boundary line of the city or town, lies partially within the city or town, or extends from one point within the city or town to another point within the city or town.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(9).

7-12-4328. Resolution to provide for assessment of costs of installation. (1) It shall be the duty of the city or town council to ascertain the cost of installing such lighting system and, on or before the first Monday in October, to pass and finally adopt a resolution levying and assessing all of the property embraced within said district with all or any portion of the entire cost of installing the same; each lot or parcel of land in said district to be assessed in accordance with the method adopted by the city council as provided in 7-12-4321 through 7-12-4324.

(2) Any such resolution shall contain a list in which shall be described each lot or parcel of land, either the total number of square feet of property contained therein or the total number of linear feet abutting the improvements as may be required to determine the total assessment in the district, and the amount levied against each lot or parcel of land set opposite.

(3) Such resolution, signed by the mayor and city clerk, shall be kept on file in the office of the city clerk.

History: En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part); amd. Sec. 3, Ch. 521, L. 1981.

Compiler's Comments

1981 Amendment: Changed the assessment on property owners from between one-fourth and three-fourths to all or any portion of the cost in the middle of (1).

7-12-4329. Notice of resolution for assessment of installation costs — hearing on resolution. (1) A notice, signed by the city clerk, stating that the resolution levying the assessment to defray the portion of the cost of installing and maintaining said lights and supplying electrical current therefor for the first year as determined by the city or town council is on file in his office subject to inspection for a period of 5 days shall be published at least once in a newspaper published in the city.

(2) Such notice shall state the time and place at which objections to the final adoption of such resolution shall be heard by the council. The time for

such hearing shall not be less than 5 days after the publication of such notice.

History: **En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).**

7-12-4330. Hearing on resolution for assessment of installation costs. (1) At the time so fixed, the council shall meet and hear all such objections and for the purpose may adjourn from day to day and may modify such resolution in whole or in part.

(2) A copy of such resolution as finally adopted, certified by the city clerk, must be delivered within 2 days after its passage to the city treasurer.

History: **En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).**

7-12-4331. Lighting district fund established. All money derived from the collection of the assessments provided for in 7-12-4328 through 7-12-4330 shall constitute a fund to be known as the special improvement lighting district No. .... fund.

History: **En. Sec. 6, Ch. 143, L. 1915; re-en. Sec. 5265, R.C.M. 1921; amd. Sec. 4, Ch. 143, L. 1927; amd. Sec. 1, Ch. 26, L. 1929; re-en. Sec. 5265, R.C.M. 1935; R.C.M. 1947, 11-2251(part).**

7-12-4332. Resolution to provide for assessment of maintenance costs. It shall be the duty of the city or town council to estimate, as nearly as practicable, the cost of maintaining such lights and furnishing electrical current therefor each year and the portion thereof to be assessed against the property embraced within the district and, before the first Monday in October, to pass and finally adopt a resolution levying and assessing said property within said district with an amount equal to the proportion of the cost of such maintenance and electrical current so determined to be especially assessed against said property.

History: **En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).**

7-12-4333. Procedure for resolution for assessment of maintenance costs. Said resolution levying and assessing said portion of the cost of maintenance and for furnishing electrical current therefor shall be prepared and certified to in the same manner as the resolution provided for in 7-12-4328 through 7-12-4330, and the same notice and hearing shall be given thereon. This resolution shall be adopted and certified and the assessment collected in the same manner, as nearly as may be, in the case of the resolution provided for in 7-12-4328 through 7-12-4331.

History: **En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).**

7-12-4334. Lighting district maintenance fund. All money derived from the collection of the assessment provided for in the resolution required by 7-12-4333 shall be paid into a fund known as the special improvement lighting district No. .... maintenance fund, the number of which shall correspond with the number of the lighting district, for the maintenance of and the supplying of current for which the tax is levied. Such fund shall be used to defray the expense of maintaining and furnishing electrical current for the lights in said district and for no other purpose.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4335. Change of boundaries of maintenance district. The city or town council shall have the power, not more than once in a year, to change by resolution the boundaries and number of any maintenance district, but such change of boundaries shall not affect indebtedness existing at the time of such change.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(part).

7-12-4336. Effect of mistake as to property ownership. When, under any of the provisions of this part, special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake relating to the ownership thereof shall affect such assessment or render it void or voidable.

History: En. Sec. 8, Ch. 143, L. 1915; re-en. Sec. 5267, R.C.M. 1921; re-en. Sec. 5267, R.C.M. 1935; R.C.M. 1947, 11-2253.

7-12-4337. Incorporation of procedures to correct errors and omissions. All remedies, provisions, and means provided by existing laws or by the ordinances of any city availing itself of the provisions of this part which are for the correction of errors or omissions in the adoption of any resolution or proceeding or in the levy of any assessment or for the collection thereof, for the enforcement of any such levy by the sale of the property against which the assessment is made, or for the redemption of the property from such sale or which are otherwise applicable to the administration of this part are available in the administration of this part as if such remedies, provisions, and means were contained in this part.

History: En. Sec. 9, Ch. 143, L. 1915; re-en. Sec. 5268, R.C.M. 1921; re-en. Sec. 5268, R.C.M. 1935; R.C.M. 1947, 11-2254; amd. Sec. 16, Ch. 251, L. 1979.

7-12-4338. Assessments to have effect of lien. Any special assessment levied and made for any purpose aforesaid, together with all costs and penalties, shall constitute a lien upon and against the property upon which assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same. The lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest, or otherwise as provided by law.

History: En. Sec. 7, Ch. 143, L. 1915; re-en. Sec. 5266, R.C.M. 1921; amd. Sec. 1, Ch. 17, L. 1923; amd. Sec. 7, Ch. 143, L. 1927; re-en. Sec. 5266, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1943; R.C.M. 1947, 11-2252(3).

7-12-4339 and 7-12-4340 reserved.

7-12-4341. Financing of lighting district improvements. All costs and expenses incurred in the construction of the improvements specified in this part shall be paid for by special improvement lighting district bonds or warrants, in such form as may be prescribed by ordinance, drawn against a fund to be known as the special improvement lighting district No. .... fund.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R.C.M. 1921; re-en. Sec. 5263, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971; R.C.M. 1947, 11-2249(part).

7-12-4342. Details relating to lighting district bonds and warrants. (1) Said warrants or bonds shall be in the denomination of $100 or fractions or multiples thereof and may be issued in installments.

(2) Such warrants or bonds shall be redeemed by the treasurer when there is money available therefor in the fund against which said warrants or bonds are issued and shall bear interest from the date of registration thereof until called for redemption or paid in full, interest to be payable annually on January 1 of each year as expressed by the interest coupon attached thereto, which may bear the engraved facsimile signature of the mayor and city clerk.

(3) Such warrants or bonds may extend over a period not to exceed 8 years.

(4) The requirements of this section and 7-12-4341 shall apply to all special improvement lighting districts, including those now in the process of formation or to be formed hereafter.

History: En. Sec. 4, Ch. 143, L. 1915; re-en. Sec. 5263, R.C.M. 1921; re-en. Sec. 5263, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1947; amd. Sec. 18, Ch. 234, L. 1971; R.C.M. 1947, 11-2249(part).

Part 44

Special Provisions for Street Sprinkling Districts

7-12-4401. Street sprinkling authorized. Whenever the council of any city or town desires to sprinkle all or any part of the streets or avenues of its city or town with water, oil, salt, or any other dust palliative, as provided in this part, it shall provide by ordinance a method of doing said work and of paying for the same under the following restrictions and regulations.

History: En. Sec. 24, p. 218, L. 1897; re-en. Sec. 3390, Rev. C. 1907; re-en. Sec. 5272, R.C.M. 1921; amd. Sec. 1, Ch. 97, L. 1927; re-en. Sec. 5272, R.C.M. 1935; R.C.M. 1947, 11-2263.

7-12-4402. Creation of sprinkling districts. A resolution dividing the whole or any part of their city or town into sprinkling districts, to be known and designated by number, shall be passed. Said resolution shall plainly define the boundaries of the several districts or enumerate the streets, alleys, and public places or any part thereof constituting the different districts.

History: En. Sec. 25, p. 218, L. 1897; re-en. Sec. 3391, Rev. C. 1907; re-en. Sec. 5273, R.C.M. 1921; re-en. Sec. 5273, R.C.M. 1935; R.C.M. 1947, 11-2264.

7-12-4403. Alteration of sprinkling districts. When once defined, sprinkling districts shall not be changed during the same calendar year but may be changed by resolution the following year or any year thereafter.

History: En. Sec. 26, p. 218, L. 1897; re-en. Sec. 3392, Rev. C. 1907; re-en. Sec. 5274, R.C.M. 1921; re-en. Sec. 5274, R.C.M. 1935; R.C.M. 1947, 11-2265.

7-12-4404. Manner of providing sprinkling services. The sprinkling in districts so established may be done by contract or by forces employed by the city or town or by both, in such manner as the council may elect.

History: En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907; re-en. Sec. 5275, R.C.M. 1921; re-en. Sec. 5275, R.C.M. 1935; R.C.M. 1947, 11-2266(part).

7-12-4405. Improvements within sprinkling districts — ordinance required. (1) Cities and towns are hereby authorized and empowered to prepare and improve streets, avenues, and alleys within the sprinkling districts so that the sprinkling and applying of water, oil, and salt or any other dust palliative or preventive will be of a durable and continuing benefit. The city or town council shall provide by ordinance a method or methods of doing said work and improvements.

(2) Cities and towns are authorized to maintain the work and improvements made under subsection (1).

(3) At least 15 days must elapse between the day on which said proposed ordinance is introduced and the day on which final action thereon is taken.

History: (1)En. Sec. 1, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.1, R.C.M. 1935; Sec. 11-2258, R.C.M. 1947; (2)En. Sec. 3, Ch. 12, Ex. L. 1933; re-en Sec. 5271.3, R.C.M. 1935; Sec. 11-2260, R.C.M. 1947; (3)En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; Sec. 11-2262, R.C.M. 1947; R.C.M. 1947, 11-2258, 11-2260, 11-2262(part).

7-12-4406. Notice of ordinance for improvements. The city or town clerk must give notice of the introduction of such proposed ordinance and of the time it will be up for passage:

(1) by publication three times in a daily newspaper or a newspaper printed and published every day except Sunday or in a weekly newspaper for two successive issues in such city or town; or

(2) if there be no such newspaper, then by posting for at least 10 days in three public places in each of the wards of said city or town.

History: En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; R.C.M. 1947, 11-2262(part).

7-12-4407. Protest against ordinance for improvements. If 40% or more of the abutting property owners protest in writing to said city or town council against the passage of said proposed ordinance, then no further action shall be taken thereon and the same shall lapse.

History: En. Sec. 5, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.5, R.C.M. 1935; R.C.M. 1947, 11-2262(part).

7-12-4408 through 7-12-4420 reserved.

7-12-4421. Choice in manner of making assessments. The assessments for the costs and expenses of sprinkling streets shall be made against all of the property embraced within each sprinkling district by one of the three methods provided in 7-12-4422 through 7-12-4424.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(part).

7-12-4422. Assessment of costs — area option. Each lot or parcel of land within such district shall be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(2).

7-12-4423. Assessment of costs — frontage option. Each lot or parcel of land within such district abutting upon some street upon which sprinkling is done shall be assessed for that part of the whole cost which its street frontage bears to the street frontage of the entire district.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(1).

7-12-4424. Assessment of costs — combined area-frontage option. A portion of the total cost to be assessed in each sprinkling district may be assessed against the several lots or parcels of land within the district by the method provided in 7-12-4422 on a frontage basis and the remainder of such cost by the method provided in 7-12-4423 on an area basis. The proportion to be assessed in each district by each such method shall be determined and fixed by the city or town council.

History: En. Sec. 28, p. 218, L. 1897; re-en. Sec. 3394, Rev. C. 1907; re-en. Sec. 5276, R.C.M. 1921; amd. Sec. 2, Ch. 97, L. 1927; re-en. Sec. 5276, R.C.M. 1935; R.C.M. 1947, 11-2267(3).

7-12-4425. Resolution for assessment of costs of sprinkling. (1) It shall be the duty of said council to estimate, as near as practicable, the cost of sprinkling in such districts so established for the season; and before the first Monday in November of each year, they shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to not less than 75% of the entire cost of said work, exclusive of the cost of sprinkling parks and public places.

(2) The resolution levying the assessment to defray the cost of sprinkling shall contain a list in which shall be described the lot or parcel of land assessed, with the name of the owner thereof if known, and the amount levied thereon set opposite.

(3) Such resolution shall be kept on file in the office of the city clerk.

History: (1)En. Sec. 27, p. 218, L. 1897; amd. Sec. 3, Ch. 123, L. 1903; re-en. Sec. 3393, Rev. C. 1907; re-en. Sec. 5275, R.C.M. 1921; re-en. Sec. 5275, R.C.M. 1935; Sec. 11-2266, R.C.M. 1947; (2), (3)En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; Sec. 11-2268, R.C.M. 1947; R.C.M. 1947, 11-2266(part), 11-2268(part).

7-12-4426. Notice of resolution for assessment of sprinkling costs. (1) A notice, signed by the city clerk, stating that the resolution levying a special assessment to defray the cost of sprinkling in the several districts is on file in his office and subject to inspection for a period of 5 days, shall be published at least once in a newspaper published in the city or town.

(2) The notice shall state the time and place at which objections to the final adoption of the resolution will be heard by the council. The time for the hearing shall be not less than 5 days after the publication of the notice.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; R.C.M. 1947, 11-2268(part); amd. Sec. 17, Ch. 251, L. 1979.

7-12-4427. Hearing on resolution for assessment of sprinkling costs. (1) At the time so set, the council shall meet at their regular place of meeting and hear all objections which may be made to such assessment or any part thereof and may adjourn from time to time for that purpose and may by resolution modify such assessment in whole or in part.

(2) A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer on or before the first Monday in October, and such

assessment shall be placed upon the tax roll and collected in the same manner as other taxes.

History: En. Sec. 29, p. 218, L. 1897; re-en. Sec. 3395, Rev. C. 1907; re-en. Sec. 5277, R.C.M. 1921; re-en. Sec. 5277, R.C.M. 1935; R.C.M. 1947, 11-2268(part).

7-12-4428. Assessment of costs of improvements and maintenance of improvements. Cities and towns are authorized to assess the cost of the work, improvements, and maintenance authorized by 7-12-4405 against the property in such sprinkling districts in the manner and as provided in 7-12-4421 through 7-12-4424 to meet the payments required to be made each year.

History: En. Sec. 4, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.4, R.C.M. 1935; R.C.M. 1947, 11-2261.

7-12-4429. Financial assistance from the United States. Cities and towns are authorized to:

(1) enter into suitable agreements with the United States of America for loans of money and for receiving financial assistance to do the work and improvements contemplated by 7-12-4405; and

(2) provide for the repayment thereof by yearly payments from funds derived from such sprinkling districts created under 7-12-4405, apportioned over a period of time not exceeding 20 years.

History: En. Sec. 2, Ch. 12, Ex. L. 1933; re-en. Sec. 5271.2, R.C.M. 1935; R.C.M. 1947, 11-2259.

Part 45

Special Provisions for Street Parking Districts

7-12-4501. Abandonment of street parking improvement district — resolution. Whenever it is deemed to the best interest of a city or town or the inhabitants thereof by the mayor and council of such city or town, the mayor and council are authorized to abandon the maintenance of any street parking improvement district established in such city or town by the passage of a resolution of intention to abandon the same.

History: En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part).

7-12-4502. Notice of intention to abandon district. (1) After the passage of the resolution provided for in 7-12-4501, the city or town clerk shall give notice of such intention to abandon by one publication in a newspaper published in such city or town at least 10 days prior to the passage of a resolution abandoning the same. In case there is no publication of a newspaper in such city or town, then notice shall be given by the posting of a notice of such intention to abandon in three places within such district to be abandoned.

(2) Said notice shall specify the boundaries of such district to be abandoned, the date of the passage of the resolution of intention to abandon, and the date set for the passage of the resolution of abandonment and that unless 40% of the owners in the district file written protest with the clerk of such city or town before the passage of the resolution, the same will be passed. Said notice shall also set forth, when applicable, that it shall be the duty of

the owners of the property abutting on the street parking district involved to maintain the same after such abandonment.

History: En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part).

7-12-4503. Protest to abandonment of district. Unless 40% of the property owners owning property abutting the district file written protests against the abandonment by the date set for the passage of the resolution of abandonment, the council shall pass a resolution declaring the district abandoned.

History: En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part); amd. Sec. 18, Ch. 251, L. 1979.

7-12-4504. Responsibility and liability of property owners following abandonment of district. (1) Following passage of the resolution of abandonment, it shall be the duty of all property owners owning property abutting said district to maintain such portion thereof abutting their property.

(2) Such abandonment, however, shall not relieve the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against said district prior to the date of abandonment.

History: En. Sec. 1, Ch. 38, L. 1951; R.C.M. 1947, 11-2285(part).

CHAPTER 13

UTILITY SERVICES

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Part 1

Metropolitan Sanitary and/or Storm Sewer District

7-13-101. Authorization to create metropolitan sanitary and/or storm sewer districts. Whenever the public convenience and necessity may require, in order to construct sanitary and/or storm sewer systems within any county, which sanitary and/or storm sewer systems would serve the inhabitants of any county as well as the inhabitants of any city or town within said county, the board of county commissioners, with the approval of the city or town council, may create metropolitan sanitary and/or storm sewer districts.

History: **En. Sec. 1, Ch. 185, L. 1957; R.C.M. 1947, 16-4401(part).**

7-13-102. Resolution of intention to create metropolitan sanitary and/or storm sewer district. (1) Before creating any metropolitan sanitary and/or storm sewer district, the board of county commissioners shall pass a resolution of intention to do so.

(2) The resolution shall designate:

(a) the proposed name of such district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands to be included within said district, giving the boundaries thereof;

(d) the general character of the sanitary and/or storm sewer system and its proposed location;

(e) the name of the engineer who is to have charge of the work; and

(f) the estimated cost thereof.

History: **En. Sec. 1, Ch. 185, L. 1957; R.C.M. 1947, 16-4401(part).**

7-13-103. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements, it shall be sufficient to briefly describe the work or the metropolitan sanitary and/or storm sewer district, or both, and to refer to the resolution of intention for further particulars.

History: **En. Sec. 5, Ch. 185, L. 1957; R.C.M. 1947, 16-4405.**

7-13-104. Transmittal of resolution of intention to municipalities. Upon passage of such resolution of intention, the board of county commissioners shall transmit a copy of the same to the executive head of any city or town within the proposed district for consideration by such city or town council.

History: **En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).**

7-13-105. Concurrence required for further proceedings. If the city or town council does not concur in the resolution of the board of county commissioners, the board shall have no authority to proceed further with the creation of the district.

History: **En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).**

7-13-106. Resolution of concurrence. If the city or town council shall by resolution concur in the resolution of the board of county commissioners, a copy of the resolution of concurrence shall be transmitted to the board.

History: **En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).**

7-13-107. Notice of resolution of intention upon concurrence — hearing. (1) If the city or town council concurs in the resolution of the board of county commissioners, the board must give notice of the passage of its resolution of intention and of the concurrence therein by the city or town council.

(2) The notice must be published for 10 consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created. The board shall also cause a copy of such notice to be posted in three public places within the boundaries of such special improvement district. A copy of such notice shall be mailed to every person, firm, or corporation or the agent of such person, firm, or corporation owning property within the proposed district, at his last known place of residence, upon the same day such notice is first published or posted.

(3) Such notice must describe the general character of the improvement or improvements so proposed to be made, state the estimated cost thereof, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of such improvements or the creation of such district. The notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries.

History: **En. Sec. 2, Ch. 185, L. 1957; R.C.M. 1947, 16-4402(part).**

7-13-108. Right to protest. (1) At any time within 30 days after the date of the first publication of the passage of the resolution of intention, any owner of property liable to be assessed for said work may make written protest against the proposed work.

(2) Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him.

History: **En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part).**

7-13-109. Sufficient protest to bar proceedings. If the protest against the proposed work is made by the owners of more than 50% of the area in the proposed district, no further proceedings shall be taken by the board of county commissioners.

History: En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part).

7-13-110. Hearing on protest. (1) At the next regular meeting of the board of county commissioners after the expiration of the time within which said protest may be made, the board shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district.

(3) The board may adjourn said hearing from time to time.

History: En. Sec. 3, Ch. 185, L. 1957; R.C.M. 1947, 16-4403(part).

7-13-111. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the board of county commissioners shall pass a resolution creating the metropolitan sanitary and/or storm sewer district in accordance with the resolution of intention theretofore introduced and passed by the board.

(2) The board shall be deemed to have acquired jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice of the passing of the resolution of intention;

(b) when a protest shall have been found by said board to be insufficient;

(c) when a protest shall have been overruled.

History: En. Sec. 4, Ch. 185, L. 1957; R.C.M. 1947, 16-4404.

7-13-112. County commissioners to administer district. (1) The board of county commissioners shall be ex officio commissioners of the metropolitan sanitary and/or storm sewer district formed under the provisions of this part and shall have sole and complete jurisdiction over all drainage structures and sewage treating plants which are now or may be hereafter built and situated within said district. The commission shall be responsible for the proper functioning and maintenance thereof.

(2) The commission shall be responsible for the condition and maintenance of all publicly owned streets, alleys, land, parks, or other thoroughfares within the boundaries of such district insofar as such may be affected by the construction or maintenance of the structures under control and jurisdiction of such district.

History: En. Sec. 11, Ch. 185, L. 1957; R.C.M. 1947, 16-4411.

7-13-113. Change of boundaries — limitations. (1) The county commissioners may by resolution make such changes in the boundaries of a district as they shall deem reasonable and proper but may not delete any portion of the proposed area which will create an island of included or excluded lands.

(2) They may not delete any portion of the proposed area which is contributing or may reasonably be expected to contribute to the pollution of any watercourse or body of water in the proposed area.

(3) For the purpose of subsection (2), it will be conclusively presumed that an area which is within 1,500 feet of a proposed or existing sanitary sewer is contributing to the pollution of a watercourse in the proposed area.

History: En. 16-4414, 16-4415 by Secs. 1, 2, Ch. 165, L. 1965; R.C.M. 1947, 16-4414(part), 16-4415.

7-13-114. Applicable provisions of laws relating to rural improvement districts. The provisions of 7-12-2101, 7-12-2106, 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), and 7-12-2169 through 7-12-2174 pertaining to the powers and duties of the county commissioners in rural improvement districts shall likewise apply under the provisions of this part.

History: En. Sec. 13, Ch. 185, L. 1957; R.C.M. 1947, 16-4413.

7-13-115. Adequate records to be maintained. The records of the district pertaining to the collection of the operation and maintenance tax levied hereunder and the records of the district pertaining to expenditures for construction of the system shall be kept and maintained in the office of the treasurer of the county wherein the district is located. These records shall include but not be limited to a list of individual property which is delinquent in payment, together with the name of the owner or owners thereof.

History: En. Sec. 5, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.4.

7-13-116 through 7-13-120 reserved.

7-13-121. Assessment of costs. To defray the cost of installing and maintaining either sanitary or storm sewer systems under the provisions of this part, the board of county commissioners shall adopt the following method of assessment:

(1) The board shall assess the entire cost of the improvements against the entire metropolitan sanitary district.

(2) Each lot or parcel of land assessed in such district is to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

History: En. Sec. 7, Ch. 185, L. 1957; R.C.M. 1947, 16-4407.

7-13-122. Status of federal property within metropolitan sanitary and/or storm sewer district. Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the board shall in the resolution of intention declare that the said lots, pieces, or parcels of land shall be omitted from the assessment to be made thereto to cover the cost and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the county from its general fund.

History: En. Sec. 6, Ch. 185, L. 1957; R.C.M. 1947, 16-4406.

7-13-123. Restriction on assessments following change of boundaries. Nothing in 7-13-113, however, shall permit the assessment of the cost of any such system against the lands remaining in the district after any such boundary change at a rate per square foot higher than the rate per square foot which would have been so assessed if the entire cost of the improvements as estimated in the resolution of intention had been assessed against each lot and parcel of land included within the boundaries of the district as described in said resolution of intention unless a new resolution of intention to recreate the district is adopted and a hearing held thereon upon notice as required for the original resolution of intention.

History: **En. 16-4414 by Sec. 1, Ch. 165, L. 1965; R.C.M. 1947, 16-4414(part).**

7-13-124. Resolution to assess and levy tax for making improvements. (1) To defray the cost of making improvements in any special improvement district, the board of county commissioners shall by resolution levy and assess a tax upon all property in the district created for such purpose by using for a basis for such assessment the method provided for by this part.

(2) Such resolution shall contain a description of each lot or parcel of land, with the name of the owner if known, and the amount of each partial payment when made and the day when the same shall become delinquent.

(3) Such resolution, signed by the chairman of the board, shall be kept on file in the office of the county clerk.

History: **En. Secs. 8, 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4408(part), 16-4409(part).**

7-13-125. Term of assessment for costs of construction. The payment of the assessment to defray the cost of constructing any improvements in said metropolitan sanitary and/or storm sewer district may be spread over a term of not to exceed 20 years, payment to be made in equal installments.

History: **En. Sec. 8, Ch. 185, L. 1957; R.C.M. 1947, 16-4408(part).**

7-13-126. Notice of resolution to assess and levy tax for making improvements — protest. (1) A notice, signed by the county clerk and stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county clerk and is subject to inspection, shall be published in at least one publication in a newspaper published nearest to where the special improvement is to be made.

(2) Such notice shall state the time and place in which objections to the final adoption of such resolution will be heard by the board of county commissioners.

History: **En. Sec. 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4409(part).**

7-13-127. Hearing on protest. (1) The time for the hearing on protest shall be not less than 5 days after the publication of the notice required by 7-13-126.

(2) At the time so fixed, the board of county commissioners shall meet and hear all such objections and for that purpose may adjourn from day to day. The board may by resolution modify such assessment in whole or in

part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer 2 days after its passage.

History: **En. Sec. 9, Ch. 185, L. 1957; R.C.M. 1947, 16-4409(part).**

7-13-128. Assessments and other charges as lien. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this part, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the passage of the resolution levying such assessment. The lien can only be extinguished by payment of such assessment, with all penalties, costs, and interest.

History: **En. Sec. 10, Ch. 185, L. 1957; R.C.M. 1947, 16-4410.**

7-13-129 through 7-13-140 reserved.

7-13-141. *(Temporary)* **Charges for services.** (1) The board of county commissioners shall have full power and authority by ordinance or resolution to fix and establish just and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated by, controlled by, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this part.

(2) Such rates, charges, and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters.

7-13-141. *(Effective January 1, 1982)* **Charges for services.** (1) The board of county commissioners shall have authority by ordinance or resolution to fix and establish just and equitable rates, charges, and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated by, controlled by, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this part.

(2) Such rates, charges, and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered and may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters.

History: **En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969; R.C.M. 1947, 16-4416(part); amd. Sec. 2, Ch. 419, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "full power and" before "authority" in subsection (1).

Effective Date: Section 7, Ch. 419, L. 1981, provided: "This act is effective on January 1, 1982."

Coordination With House Bill 765: Section 6, Ch. 419, L. 1981, provided: "If House Bill 765 [Ch. 607, L. 1981] introduced in the 47th legislature is passed and approved:

(1) sections 1, 4, and 5 of this act are void and of no effect;

(2) the amendatory material added to 7-13-141, MCA, as subsection (3) in section 2 of this act relating to regulatory authority of the public service commission is void and of no effect; and

(3) the amendatory material added to 7-13-144, MCA, as new subsection (2) in section 3 of this act relating to the regulatory authority of the public service commission is void and of

no effect and the code commissioner is authorized and instructed to internally renumber the subsections of section 7-13-144, MCA, accordingly.

(4) the bracketed material in section 3 relating to House Bill 765 is effective."

7-13-142. Authorization to utilize federal funds. The board of county commissioners is hereby authorized to apply for and receive from the federal government, on behalf of said metropolitan sanitary and/or storm sewer district, any money that may be appropriated by the congress for aiding in local public works projects. Likewise, the board may borrow from the federal goverment any funds available for assisting in the planning or financing of local public works projects and repay the same out of the money received from the tax levy provided for in this part.

History: En. Sec. 12, Ch. 185, L. 1957; amd. Sec. 16, Ch. 455, L. 1975; R.C.M. 1947, 16-4412(part).

7-13-143. Charges for costs when federal funding is sought. Notwithstanding any other section of this part or limitation imposed therein, when the board has applied pursuant to 7-13-142, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of treatment works to pay that portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial user's wastes.

History: En. Sec. 12, Ch. 185, L. 1957; amd. Sec. 16, Ch. 455, L. 1975; R.C.M. 1947, 16-4412(part).

7-13-144. *(Temporary)* **Resolution to establish service charges — hearing — limitations and tax levy.** The board of county commissioners shall have authority, by resolution and after public hearing:

(1) to fix and establish the sewer rates, charges, and rentals at amounts sufficient in each year, not to exceed $10 per unit user per year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) to fix and establish an additional charge, not to exceed $10 per unit user per year, for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and

(3) to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in 7-13-151 through 7-13-156.

7-13-144. *(Effective January 1, 1982, through June 30, 1983)* **Resolution to establish service charges — hearing — limitations and tax levy.** The board of county commissioners shall have authority, subject to the provisions of Title 69, chapter 7, by resolution and after public hearing:

(1) to fix and establish the sewer rates, charges, and rentals at amounts sufficient in each year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) to fix and establish an additional charge, for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and

(3) to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in 7-13-151 through 7-13-156.

7-13-144. *(Effective July 1, 1983)* **Resolution to establish service charges — hearing — limitations and tax levy.** The board of county commissioners shall have authority, by resolution and after public hearing:

(1) to fix and establish the sewer rates, charges, and rentals at amounts sufficient in each year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system;

(2) to fix and establish an additional charge, for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and

(3) to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district, not in excess of 2 mills on each dollar of taxable valuation, to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in 7-13-151 through 7-13-156.

History: En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969; R.C.M. 1947, 16-4416(part); amd. Sec. 1, Ch. 403, L. 1981; amd. Sec. 3, Ch. 419, L. 1981.

Compiler's Comments

1981 Amendment — Temporary Version: Chapter 403 increased from $7 to $10 the maximum per unit charges in (1) and (2).

Effective Date — Temporary Version: Section 3, Ch. 403, L. 1981, provided: "This act is effective on passage and approval." Approved April 17, 1981.

Coordination With Chapter 419: Section 2, Ch. 403, L. 1981, provided: "If house bill 790 [Ch. 419, L. 1981] introduced in the 47th legislature is passed and approved, this act becomes void and of no effect on the effective date of house bill 790 [January 1, 1982]."

1981 Amendment Version Effective January 1, 1982: Chapter 419 inserted "subject to the provisions of Title 69, chapter 7" in first sentence; and deleted "not to exceed $7 per unit user per year," after "year" in subsection (1) and after "charge" in subsection (2).

Effective Date — Version Effective January 1, 1982: Section 7, Ch. 419, L. 1981, provided: "This act is effective on January 1, 1982."

Coordination with Chapter 607 — Version Effective January 1, 1982: Section 6, Ch. 419, L. 1981, provided: "If House Bill 765 (Ch. 607, L. 1981) introduced in the 47th legislature is passed and approved:

(1) sections 1, 4, and 5 of this act are void and of no effect;

(2) the amendatory material added to 7-13-141, MCA, as subsection (3) in section 2 of this act relating to regulatory authority of the public service commission is void and of no effect; and

(3) the amendatory material added to 7-13-144, MCA, as new subsection (2) in section 3 of this act relating to the regulatory authority of the public service commission is void and of no effect and the code commissioner is authorized and instructed to internally renumber the subsections of section 7-13-144, MCA, accordingly.

(4) the bracketed material in section 3 relating to House Bill 765 is effective."

Termination by Chapter 607 — Version Effective January 1, 1982: Section 9, Ch. 607, L. 1981 (HB 765) provided: "This act shall become effective on July 1, 1981. It shall terminate on July 1, 1983."

Commissioner Correction — Version Effective July 1, 1983: The Code Commissioner removed "subject to the provisions of Title 69, chapter 7" near the beginning of the section because Ch. 607, L. 1981, enacting Title 69, ch. 7, terminates on July 1, 1983.

7-13-145. Hearing and notice on tax levy for operation and maintenance. (1) Not less than 30 days prior to the date of making the levy for operation and maintenance of the system, the county commissioners will hold a public hearing on the resolution.

(2) Notice clearly setting forth the subject matter of the hearing and the date and place thereof will be given by the commissioners by publication in a newspaper published and circulated in the county wherein the district is located once a week for 3 consecutive weeks. The notice shall also be posted in three public places within the district.

History: En. Sec. 2, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.1.

7-13-146. Preparation and filing of district budget. (1) Not less than 30 days prior to the date of the public hearing on the resolution, the county commissioners shall prepare and file in the office of the clerk and recorder of the county wherein the district is located and in the office of the board of county commissioners a complete, detailed budget for operation and maintenance of the system, showing all income and expenditures for the year prior to the hearing and all estimated income and expenditures for the next ensuing year which the levy is assessed.

(2) The provisions of law relating to county budgets and expenditures must be complied with by a metropolitan sanitary and/or storm sewer district.

History: En. Secs. 3, 4, Ch. 202, L. 1967; R.C.M. 1947, 16-4416.2, 16-4416.3.

7-13-147 through 7-13-150 reserved.

7-13-151. Authorization for reserve fund. The board of county commissioners may, in order to secure prompt payment of any metropolitan sanitary and/or storm sewer district bonds issued in payment of the cost of improvements in and for the district and the interest thereon as it becomes due, create, establish, and maintain by resolution a fund, to be designated as the "reserve fund", for each issue of such bonds.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

7-13-152. Sources of money for reserve fund. (1) For the purpose of providing money for the reserve fund, the board of county commissioners may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district such amount or amounts as may be deemed necessary or as may be agreed with the holders of the bonds.

(2) Whenever there shall be money in the bond fund which is not required for payment of any bond of the district or interest thereon, so much as may be necessary to pay the loan referred to in 7-13-154 shall, by order of the board, be transferred to the reserve fund.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

7-13-153. Transfers to reserve fund considered as loans. The amount or amounts transferred under 7-13-152 shall be deemed and considered as loans from the operation and maintenance fund to the reserve fund.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

7-13-154. Loans from reserve fund to bond fund as lien. (1) Whenever any loan is made to any bond fund from the reserve fund, the reserve fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments; on all unpaid assessments and installments of assessments on the district, whether delinquent or not; and on all money thereafter coming into the bond fund to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond for payment of which or of interest thereon such loan was made.

(2) If, after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund, there still remains a debt from the district to the reserve fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the reserve fund.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

7-13-155. Limitation on repayment of loan to reserve fund. Nothing in 7-13-151 through 7-13-156 permits the repayment of any loan to the reserve fund at any time unless all interest theretofore accrued on the bonds has been fully paid and all principal theretofore agreed to be paid in accordance with such redemption schedule as may be provided in the resolution or resolutions authorizing such bonds has been paid.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part); amd. Sec. 19, Ch. 251, L. 1979.

7-13-156. Covenants to utilize and maintain reserve fund. (1) In connection with the issuance of metropolitan sanitary and/or storm sewer district bonds, the board of county commissioners may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds, in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that money is available; and

(b) to provide money for the reserve fund pursuant to the provisions of 7-13-141 and 7-13-144 by establishing and collecting rates, charges, and rentals for sewer services and benefits in amounts sufficient to provide net revenues in excess of the current costs of operation and maintenance of the system, sufficient to maintain such balance in the reserve fund as the board may agree to and undertake.

(2) The undertakings and agreements authorized by subsection (1) shall be binding upon the county as long as any of said bonds so offered or any interest thereon remains unpaid.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965; R.C.M. 1947, 16-4417(part).

Part 2

Refuse Disposal Districts

7-13-201. Findings and purpose. (1) The improper storage, collection, and disposal of refuse is hereby declared to be a significant hazard to the health, safety, and welfare of Montana citizens and can cause the spread of disease, air pollution, and water pollution. Refuse can be an excellent habitat for disease vectors such as rats and insects.

(2) Therefore, it is deemed necessary to provide for the creation of refuse disposal districts to control storage, collection, and disposal of refuse.

History: **En. Sec. 1, Ch. 71, L. 1969; R.C.M. 1947, 69-6001.**

7-13-202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the board of directors as provided for in 7-13-213 and 7-13-241.

(2) "Commissioners" means the board of county commissioners.

(3) "Family residential unit" means the residence of a single family.

(4) "Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(5) "Refuse disposal district" means an area established with definite boundaries for the purpose of collecting and disposing of all refuse created in said district.

History: **En. Sec. 2, Ch. 71, L. 1969; amd. Sec. 1, Ch. 136, L. 1971; R.C.M. 1947, 69-6002.**

7-13-203. Authorization to create refuse disposal district. (1) Whenever it becomes necessary, the commissioners may create a refuse disposal district for the purpose of collection and/or disposal of refuse.

(2) Cities and towns may be included in the district if approved by the city and town councils.

History: **En. Sec. 3, Ch. 71, L. 1969; R.C.M. 1947, 69-6003(part).**

7-13-204. Resolution of intention to create refuse disposal district. (1) Before creating any refuse disposal district, the commissioners shall pass a resolution of intention to do so.

(2) The resolution shall designate:

(a) the proposed name of such district;

(b) the necessity for the proposed district;

(c) a general description of the territory or lands of said district, giving the boundaries thereof;

(d) the general character of the collection service;

(e) the proposed fees to be charged for the service.

History: **En. Sec. 3, Ch. 71, L. 1969; R.C.M. 1947, 69-6003(part); amd. Sec. 1, Ch. 464, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted subsection (2)(e) for "the estimated cost thereof".

7-13-205. Sufficiency of description in resolution of intention. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvement, it shall be sufficient to briefly describe the work of the refuse disposal district and to refer to the resolution of intention for further particulars.

History: **En. Sec. 6, Ch. 71, L. 1969; amd. Sec. 3, Ch. 293, L. 1973; R.C.M. 1947, 69-6006(part).**

7-13-206. Transmittal of resolution of intention to municipalities. Upon passage of such resolution of intention, the commissioners shall transmit a copy of the same to the executive head of any incorporated city or town within the proposed district for consideration by such city or town council.

History: **En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(part).**

7-13-207. Concurrence or nonconcurrence by municipality. (1) If the city or town council shall by resolution concur in the resolution of the commissioners, a copy of the resolution of concurrence shall be transmitted to the commissioners.

(2) If the incorporated city or town council does not concur in the resolution of the commissioners, the commissioners shall have no authority to include said city or town in the district, but may continue to develop the district, excluding said city or town.

History: **En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(part).**

7-13-208. Notice of resolutions of intention and concurrence — hearing. (1) The commissioners must give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, and a notice describing the general characteristics of the collection system and proposed fees to be charged for the service, designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district and stating that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office.

(2) The notice shall be published in the newspaper published nearest to the place where the proposed district is to be created for 10 consecutive days in a daily newspaper or in two issues of a weekly newspaper and posted in three public places within the boundaries of the proposed district.

(3) A copy shall be mailed by first-class mail to every person, firm, or corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published.

History: **En. Sec. 4, Ch. 71, L. 1969; amd. Sec. 1, Ch. 293, L. 1973; R.C.M. 1947, 69-6004(2); amd. Sec. 2, Ch. 464, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "proposed fees to be charged for the service" for "estimated costs" in (1).

7-13-209. Right to protest. (1) At any time within 30 days after the date of the first publication of the notice provided for in 7-13-208, any owner of property liable to be assessed for said service may make written protest against the proposed service or against the fees proposed to be charged for the service.

(2) Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him.

History: **En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part); amd. Sec. 3, Ch. 464, L. 1981.**

Compiler's Comments

1981 Amendment: Added "or against the fees proposed to be charged for the service" at the end of (1).

7-13-210. Hearing on protest. (1) At the next regular meeting of the commissioners after the expiration of the time within which the protest provided for in 7-13-209 may be made, the commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.

(2) In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district. The commissioners may include commercial and industrial establishments in said district.

(3) The commissioners may adjourn said hearings from time to time.

History: **En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part).**

7-13-211. Sufficient protest to bar proceedings. (1) If the protest against the proposed service is made by the owners of more than 50% of the family residential units in the proposed district, no further proceedings shall be taken by the commissioners.

(2) If the protest against the fees proposed to be charged is made by the owners of more than 50% of the family residential units in the proposed district, the board and commissioners shall hold a hearing to determine an acceptable fee. Following the hearing the commissioners may adopt the proposed fee or a different fee.

(3) Each commercial and industrial service that is to be included in the collection system may be considered as a family residential unit for the purpose of determining percent of protest.

History: **En. Sec. 5, Ch. 71, L. 1969; amd. Sec. 2, Ch. 293, L. 1973; R.C.M. 1947, 69-6005(part); amd. Sec. 4, Ch. 464, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted subsection (2).

7-13-212. Resolution creating district — power to order improvements. (1) Before ordering any of the proposed improvements, the commissioners shall pass a resolution creating the refuse disposal district in accordance with the resolution of intention theretofore introduced and passed by the commissioners.

(2) The commissioners shall be deemed to have acquired jurisdiction to order improvements immediately upon the occurrence of one of the following:

(a) when no protests have been delivered to the county clerk within 30 days after the date of the first publication of the notice provided for in 7-13-208;

(b) when a protest shall have been found by said commissioners to be insufficient; or

(c) when a protest shall have been overruled.

History: **En. Sec. 6, Ch. 71, L. 1969; amd. Sec. 3, Ch. 293, L. 1973; R.C.M. 1947, 69-6006(part).**

7-13-213. District to be administered by appointed board of directors. Upon creation of any refuse disposal district, the commissioners shall appoint a board of directors for the proposed refuse disposal district.

History: **En. Sec. 9, Ch. 71, L. 1969; R.C.M. 1947, 69-6009(part).**

7-13-214. Composition of board of directors. (1) The board shall consist of not less than five members.

(2) (a) The board shall consist of one county commissioner, one member from each incorporated city or town that is included in the district, and one member of the county or city-county board of health.

(b) The rest of the board shall consist of interested citizens, distributed equally throughout the district.

(3) In those counties where full-time city-county health departments exist, the city-county board of health may be designated as the board of directors for the refuse disposal district.

History: **En. Sec. 9, Ch. 71, L. 1969; R.C.M. 1947, 69-6009(part); amd. Sec. 20, Ch. 251, L. 1979.**

7-13-215. Powers and duties of board. The board of a refuse disposal district established and organized under this part has the following powers and duties, with the approval of the county commissioners of the counties involved:

(1) to develop and administer a program for the collection or disposal of refuse in the district;

(2) to employ personnel;

(3) to purchase, rent, or execute leasing agreements for such equipment and material necessary for carrying on an effective refuse collection or disposal program;

(4) to cooperate with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to carry out effective programs;

(5) to receive gifts, grants, or donations for the purpose of advancing the program and to acquire by gift, deed, purchase, or condemnation land necessary for refuse disposal purposes;

(6) to enforce department of health and environmental sciences or local board of health rules pertaining to the storage, collection, and disposal of refuse;

(7) to apply for and receive from the federal government or the state government, on behalf of the refuse disposal district, money appropriated by federal or state legislative bodies for aiding these programs;

(8) to borrow from any loaning agency funds available for assistance in planning or financing a refuse disposal district and repay these with the money received from the fees levied under this part.

History: **En. Sec. 10, Ch. 71, L. 1969; amd. Sec. 3, Ch. 136, L. 1971; amd. Sec. 93, Ch. 349, L. 1974; R.C.M. 1947, 69-6010(part).**

7-13-216. Implementation of program. The board may implement its proposed program a section at a time. If a program is implemented a section at a time, the fees may be levied only against that part of the district that is receiving the service. As the program is expanded throughout the district, that part of the district will start to pay the fee for service.

History: **En. Sec. 10, Ch. 71, L. 1969; amd. Sec. 3, Ch. 136, L. 1971; amd. Sec. 93, Ch. 349, L. 1974; R.C.M. 1947, 69-6010(9).**

7-13-217. Changes in district boundaries. The governing body of the district may by resolution make such changes in the boundaries of said district as they shall deem reasonable and proper, following the same procedures of notice and hearing outlined under 7-13-205 and 7-13-212.

History: **En. Sec. 11, Ch. 71, L. 1969; R.C.M. 1947, 69-6011.**

7-13-218. Role of county attorney. The county attorney shall be the legal advisor of the refuse disposal districts and boards within the county of his jurisdiction and shall prosecute and defend all suits to which the districts may be a party. A district or board may employ special legal counsel to defend any such suits in the event a conflict of interest would prohibit such defense by the county attorney.

History: En. Sec. 5, Ch. 136, L. 1971; amd. Sec. 1, Ch. 179, L. 1973; R.C.M. 1947, 69-6013.

7-13-219 through 7-13-230 reserved.

7-13-231. Authorization for charges for services. (1) To defray the cost of maintenance and operation of said refuse disposal district, the board shall establish a fee for service, with approval of the county commissioners, provided a public hearing has been held if written protest has been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless notice of such increase is given as provided in 7-13-208(1) and (2) and opportunity for protest is allowed as provided in 7-13-209 and 7-13-211.

(2) This fee shall be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of said district.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part); amd. Sec. 5, Ch. 464, L. 1981.

Compiler's Comments

1981 Amendment: Added the language in (1) after "county commissioners".

7-13-232. Determination of service charge. (1) The fees shall be based upon a family residential unit, and fees for commercial and industrial accounts shall be based on the comparison with a typical residential unit as to volume and type of waste produced.

(2) In no case shall the fee for disposal service exceed one-half the total fee for both collection and disposal services.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part).

7-13-233. Procedure to collect service charge. The month the service begins, the department of revenue or its agents shall insure that the amount of this fee is placed on the tax notices, to be collected with the tax. If a property owner fails to pay this fee, it shall become a lien upon the property.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part).

7-13-234. Disposition and administration of proceeds. (1) All fees and other money received by the district shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which said refuse disposal district was created.

(2) Warrants upon such funds shall be drawn by the board of county commissioners upon presentation of claims approved by the board.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part).

7-13-235. Installment payments for capital improvements. To defray the initial cost of purchasing land and equipment, payments may be spread over a term of not to exceed 20 years. Payments are to be made in equal installments out of the money received from the fee levy provided for in this part.

History: En. Sec. 8, Ch. 71, L. 1969; R.C.M. 1947, 69-6008.

7-13-236 through 7-13-240 reserved.

7-13-241. Creation of joint refuse disposal districts. (1) Joint refuse disposal districts are districts which encompass two or more counties or parts thereof.

(2) A joint refuse disposal district may be created in the following manner:

(a) The commissioners of each county affected will create the district following the procedure as prescribed under 7-13-203 through 7-13-212.

(b) The commissioners shall appoint a joint board of directors composed of at least five members.

History: En. Sec. 4, Ch. 136, L. 1971; R.C.M. 1947, 69-6012(part); amd. Sec. 21, Ch. 251, L. 1979.

7-13-242. Composition of board of directors of joint district. (1) The board of directors for a joint district will consist of one commissioner from each county involved, one member from each of the incorporated cities or towns that are included in the district, and one member from each of the county or city-county boards of health.

(2) The rest of the joint board of directors shall consist of interested citizens, distributed equally throughout the district, and the appointments shall be acceptable to all groups of county commissioners.

History: En. Sec. 4, Ch. 136, L. 1971; R.C.M. 1947, 69-6012(part).

7-13-243. Administration of funds in joint districts. Fees and other money collected by joint county refuse disposal districts may be administered by one county treasurer's office upon mutual agreement by the county commissioners of any joint refuse disposal district.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973; R.C.M. 1947, 69-6007(part).

Parts 3 through 20 reserved

Part 21

General Provisions Related to County Utility Services

7-13-2101. Authority to permit construction of utility mains. The board of county commissioners shall have the power and authority to grant to any person, association, or corporation the right to construct and maintain in, along, and under any public road or highway within such county, any pipeline for the conveyance of natural or artificial gas, water, or any other substance for the use of any county, city, or town or the inhabitants thereof.

History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2102. Constructed mains not to interfere with use of road. When constructed, such pipeline shall not now or in the future interfere with the surface use of such road or highway.

History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2103. Payment of damages and restoration of road. The person, association, or corporation owning or constructing such pipeline:

(1) shall compensate such county for any and all damages done to any such road or highway in the laying, construction, or maintenance of such pipeline; and

(2) shall promptly restore any such road or highway to its former condition of usefulness, without interference with the traffic thereon.

History: En. Sec. 1, Ch. 75, L. 1927; re-en. Sec. 4476.1, R.C.M. 1935; R.C.M. 1947, 16-1114(part).

7-13-2104. Scope of prior sections. Nothing contained in 7-13-2101 through 7-13-2103 shall be construed as in any manner affecting any of the terms and provisions of Title 70, chapter 30.

History: En. Sec. 2, Ch. 75, L. 1927; re-en. Sec. 4476.2, R.C.M. 1935; R.C.M. 1947, 16-1115.

Part 22

County Water and/or Sewer Districts

7-13-2201. Definitions. (1) The word "board" and the words "boards of directors" shall apply to the board of directors of such district.

(2) The term "county" shall mean one or more counties and shall be understood and construed to include city and county.

(3) The word "district" shall apply, unless otherwise expressed or used, to a district formed under the provisions of this part and part 23.

(4) The term "municipality", as used in this part and part 23, shall include a consolidated city and county, city, or town and includes all corporations heretofore organized and now existing and those hereafter organized for municipal purposes within such districts.

History: En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part).

7-13-2202. Interpretation. Nothing in this part and part 23 shall be so construed as repealing or in any wise modifying the provisions of any other act relating to water or sewers or the supply of water to or the acquisition thereof by counties or municipalities within this state.

History: En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part).

7-13-2203. County water and/or sewer districts authorized. (1) A county water and/or sewer district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

(2) The people of any county or counties or portion of a city or a county or city and county or any combination of these political divisions, whether such portion includes unincorporated territory or not, in the state of Montana, may organize a county water and/or sewer district under the provisions of this part and part 23 by proceeding as therein provided.

History: (1)En. Sec. 1, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4501, R.C.M. 1947; (2)En. Sec. 2, Ch. 242, L. 1957; amd. Sec. 1, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4502, R.C.M. 1947; R.C.M. 1947, 16-4501, 16-4502.

7-13-2204. Petition to create water and/or sewer district. (1) A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of county commissioners of the county in which the proposed district is located, signed by registered voters within the boundaries of the proposed district equal in number to at least 10% of the registered voters of the territory included in such proposed district.

(2) When the territory to be included in such proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which said territory lies. Each of said petitions must be signed by at least 10% of the registered voters of the territory within said county to be included within such proposed district.

(3) Such petition shall set forth and describe the proposed boundaries of such district and shall pray that the same be incorporated under the provisions of this part and part 23.

History: En. Sec. 3, Ch. 242, L. 1957; amd. Sec. 2, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 296, L. 1977; R.C.M. 1947, 16-4503(part).

7-13-2205. Notice of petition — hearing required. (1) The text of the petition referred to in 7-13-2204 shall be published once each week for 2 consecutive weeks in a newspaper printed and published in every county in which said territory lies, together with a notice stating the time of the meeting at which same will be presented.

(2) The first publication shall be at least 2 weeks before the time at which the petition is to be presented. When contained upon more than one instrument, one copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated.

(3) With such publication there shall be published a notice of the time of the meeting of the board when such petition will be considered and that all persons interested therein may then appear and be heard.

History: (1), (2)En. Sec. 3, Ch. 242, L. 1957; amd. Sec. 2, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 296, L. 1977; Sec. 16-4503, R.C.M. 1947; (3)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; R.C.M. 1947, 16-4503(part), 16-4504(part).

7-13-2206. Hearing on petition — protest. (1) At the time for the hearing, the board of county commissioners shall hear the petition and those appearing thereon, together with such written protests as shall have been filed with the county clerk and recorder prior to such hearing by or on behalf of owners of taxable property situated within the boundaries of the proposed district within the county. The board of county commissioners may adjourn such hearing from time to time, not exceeding 4 weeks in all.

(2) Upon such hearing of said petition, the board of county commissioners shall determine whether or not said petition complies with the requirements of the provisions of this part and part 23 and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of county commissioners.

History: (1)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; (2)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; R.C.M. 1947, 16-4504(part), 16-4505(part).

7-13-2207. Effect of certain irregularities. No defect in the contents of the petition or in the title to or form of the notice or signatures or lack of signatures thereto shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto.

History: En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; R.C.M. 1947, 16-4504(part).

7-13-2208. Decision on petition — election required. (1) On the final hearing, said board of county commissioners shall make such changes in the proposed boundaries which be within the county as may be deemed advisable and shall define and establish such boundaries, but said board of county commissioners shall not modify said boundaries as to exclude from such proposed district any territory which would be benefited by the formation of such district nor shall any lands which will not, in the judgment of said board of county commissioners, be benefited by such district be included within such proposed district.

(2) Upon the final determination of the boundaries of the district, the board of county commissioners of each county in which said district lies shall give notice of an election to be held in said proposed district for the purpose of determining whether or not the same shall be incorporated. The date of the election shall be not more than 60 days from the date of the final hearing of such petition.

History: (1)En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; Sec. 16-4504, R.C.M. 1947; (2)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; R.C.M. 1947, 16-4504(part), 16-4505(part).

7-13-2209. Application to include benefited lands. Any person whose lands are benefited by such district may, in the discretion of said board of county commissioners, have such lands included within said proposed district upon his application to the board of county commissioners of the county in which his lands be.

History: En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965; R.C.M. 1947, 16-4504(part).

7-13-2210. Notice of election. (1) The notice of election required by 7-13-2208 shall describe the boundaries established and shall state the proposed name of the proposed incorporation (which name shall contain the words ".... County water and/or sewer district").

(2) This notice shall be published as provided in 13-1-108.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 319, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-13-2211. Conduct of election on question of creating district. (1) The election on the question of creating the district shall be conducted, the vote canvassed, and the result declared in the same manner as provided by Title 13 in respect to general elections, so far as it is applicable, except as otherwise provided in this part and part 23.

(2) At the election the proposition to be submitted shall be: "Shall the proposition to organize .... County water and/or sewer district under parts 22 and 23 of chapter 13 of Title 7 be adopted?"

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 320, Ch. 571, L. 1979.

7-13-2212. Qualifications to vote on question of creating district. (1) Except as provided in subsection (2), no individual shall be entitled to vote at any election under the provisions of this part and part 23 unless such individual possesses all the qualifications required of electors under the general election laws of the state and is a resident of the proposed district or the owner of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district.

(2) An individual who is the owner of such real property need not possess the qualifications required of an elector in 13-1-111(1)(c), provided that such elector is qualified if he is registered to vote in any state of the United States and files proof of such registration with the election administrator.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part); amd. Sec. 321, Ch. 571, L. 1979.

7-13-2213. Effect of insufficient favorable vote. In case less than a majority of the votes cast are in favor of said proposition, the organization fails but without prejudice to renewing proceedings at any time in the future.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part).

7-13-2214. Order creating district upon sufficient favorable vote. (1) If at least 40% of all registered voters residing within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said board of county commissioners of each such county shall, by an order entered on its minutes, declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated.

(2) The county clerk of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county or each county in which such district is situated a certificate stating that such a proposition was adopted.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part).

7-13-2215. Certificate of incorporation from secretary of state. (1) Upon the receipt of the certificate referred to in 7-13-2214(2), the secretary of state shall, within 10 days, issue his certificate reciting that the district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county or counties in which such district is situated.

(2) From and after the date of such certificate, the district named therein shall be deemed incorporated, with all the rights, privileges, and powers set forth in this part and part 23 and necessarily incident thereto.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; R.C.M. 1947, 16-4505(part).

7-13-2216. Limitations on lawsuits challenging formation of district. (1) A finding of the board of county commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within 1 year after the order of the board of county commissioners declaring such district organized as herein provided and not otherwise.

(2) Any proceeding wherein the validity of the incorporation of the district is denied shall be commenced within 3 months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said district and all proceedings in respect thereto shall be held to be valid and in every respect legal and incontestable.

History: (1)En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 1, Ch. 257, L. 1974; amd. Sec. 1, Ch. 521, L. 1975; amd. Sec. 2, Ch. 296, L. 1977; Sec. 16-4505, R.C.M. 1947; (2)En. Sec. 13, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4513, R.C.M. 1947; R.C.M. 1947, 16-4505(part), 16-4513(part).

7-13-2217. General powers of water and/or sewer district. (1) Any district incorporated as provided in this part and part 23 shall have power to:

(a) have perpetual succession;

(b) sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;

(c) adopt a seal and alter it at pleasure;

(d) take by grant, purchase, gift, devise, or lease and to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers;

(e) make contracts, employ labor, and do all acts necessary for the full exercise of the foregoing powers.

(2) The powers enumerated in this part and part 23 shall, except as otherwise provided in this part and part 23, be exercised by the board of directors provided for in 7-13-2231 and elected and appointed as described in this part and part 23.

History: **(1)En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4514, R.C.M. 1947; (2)En. Sec. 15, Ch. 242, L. 1957; Sec. 16-4515, R.C.M. 1947; R.C.M. 1947, 16-4514(part), 16-4515.**

7-13-2218. District powers related to water and sewer projects. Any district incorporated as provided in this part shall have power to:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district; such purposes to include but not be limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes;

(2) store water for the benefit of the district; conserve water for future use; appropriate, acquire, and conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, in the name of the district, and assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated therein;

(3) commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

(4) commence, maintain, and defend actions and proceedings to prevent any interference with the aforesaid waters or rights as may endanger the inhabitants or lands of the district;

(5) lease of and from any person, firm, or public or private corporation, with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain the same;

(6) sell water or the use thereof for household or domestic use or other similar purposes and, whenever there is a surplus of water, sell or otherwise dispose of the same to municipalities or towns or to consumers located within or without the boundaries of the district.

History: **En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4514(5) thru (7).**

7-13-2219. Power to construct works across roads and other obstacles. The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch, or flume which the route of said works may intersect or cross; provided such works are constructed in such manner as to afford security for life and property; and said board shall restore the crossings and intersections to their former state as near as may be or in a manner not to have impaired unnecessarily their usefulness.

History: En. Sec. 24, Ch. 242, L. 1957; R.C.M. 1947, 16-4524(part).

7-13-2220. Right-of-way across state lands. The right-of-way is given, dedicated, and set apart to locate, construct, and maintain district works over and through any lands which are the property of this state, and the district has the same rights and privileges relating to the right-of-way as are granted to municipalities.

History: En. Sec. 24, Ch. 242, L. 1957; R.C.M. 1947, 16-4524(part); amd. Sec. 22, Ch. 251, L. 1979.

7-13-2221. Powers related to district finances. Any district incorporated as provided in this part shall have power to:

(1) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water or sewer development projects;

(2) cooperate and contract with the state or federal government or any department or agency thereof in furnishing assurances for and meeting local cooperation requirements of any project involving control, conservation, and use of water;

(3) borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness; also refund or retire any indebtedness or lien that may exist against the district or property thereof;

(4) cause taxes to be levied in the manner provided for in this part and part 23 for the purpose of paying any obligation of the district and to accomplish the purposes of this part and part 23 in the manner provided in this part and part 23.

History: En. Sec. 14, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-1514(8) thru (10).

7-13-2222. Applicability of general election laws. Except as otherwise provided in this part and part 23, the provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all district elections.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).

7-13-2223. Repealed. Sec. 407, Ch. 571, L. 1979.

History: (1)En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec 3, Ch. 296, L. 1977; Sec. 16-4507, R.C.M. 1947; (2)En. Sec. 13, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4513, R.C.M. 1947; (3)En. Sec. 21, Ch. 242, L. 1957; Sec. 16-4521, R.C.M. 1947; R.C.M. 1947, 16-4507(22), 16-4513(part), 16-4521(part); amd. Sec. 23, Ch. 251, L. 1979.

7-13-2224. Repealed. Sec. 2, Ch. 538, L. 1979; Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part).

7-13-2225. Combination of elections. (1) The board of county commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness so that the electors of the district may vote on all of these matters on the same date and at the same time.

(2) If the elections are combined, the board of county commissioners shall so declare by resolution containing the provisions required by 7-13-2321. If the elections are combined, the notice of the election shall contain the names of the candidates and the details concerning the bonded indebtedness.

(3) Candidates for the office of director shall be nominated in the manner required by 7-13-2235 through 7-13-2248.

History: En. 16-4535 by Sec. 1, Ch. 109, L. 1969; R.C.M. 1947, 16-4535; amd. Sec. 41, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (2), inserted "shall contain" before "the names of the candidates"; deleted "may be given in the manner prescribed by 7-13-2210, [7-13-2248], or either of them" at the end of (2); made minor changes in phraseology; removed brackets around internal reference in (3).

7-13-2226 through 7-13-2230 reserved.

7-13-2231. District to be governed by board of directors. (1) At an election to be held within a district under the provisions of this part and part 23 and the laws governing general elections not inconsistent therewith, the district thus organized shall proceed, within 120 days after its formation, to the election of a board of directors.

(2) The board of directors is the governing body of such district.

History: (1)En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; Sec. 16-4506, R.C.M. 1947; (2)En. Sec. 10, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4510, R.C.M. 1947; R.C.M. 1947, 16-4506(part), 16-4510(part); amd. Sec. 322, Ch. 571, L. 1979.

7-13-2232. Composition of board of directors. (1) If there are no municipalities within the boundaries of said district, the board of directors shall consist of five members or three members if there are 10 or less qualified electors in the district.

(2) In all cases where the boundaries of such district include any municipality or municipalities, said board, in addition to said five or three directors to be elected as aforesaid, shall consist of one additional director for each of said municipalities within such district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed, and, if there be any unincorporated territory within said district, one additional director to be appointed by the board of county commissioners of each county containing such territory.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part).

7-13-2233. Qualifications of directors. Any director so elected or appointed shall be an owner or lessee of real property within said district or a resident therein.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part).

7-13-2234. Term of office. (1) All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors.

(2) Except as otherwise provided, the term of office of directors elected under the provisions of this part and part 23 shall be 4 years from and after the date of their election.

(3) Directors elected at the first regular election under this part and part 23 after July 1, 1979, shall serve as follows:

(a) In districts requiring the election of five elected directors, three directors shall serve for a term of 2 years and two for a term of 4 years.

(b) In districts requiring the election of three elected directors, one director shall serve for a term of 2 years and two for a term of 4 years.

(c) At their first meeting, the directors shall determine by lot which of them shall serve the term or terms less than 4 years. Every term thereafter shall be for a period of 4 years.

(4) The term of office of directors appointed by the mayor or mayors or by the board of county commissioners shall be 6 years from and after the date of appointment. Directors to be first appointed under the provisions of this part and part 23 shall be appointed within 90 days after the formation of the district.

(5) The first regular election for a district shall be held in November of the next odd-numbered year following the formation of the district.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part); amd. Sec. 1, Ch. 538, L. 1979; amd. Sec. 323, Ch. 571, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 571 and Ch. 538, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Although Ch. 571 and Ch. 538 appear to conflict in use of language, they do not conflict conceptually. In preparing the composite, changes were made to incorporate the concepts of both chapters.

7-13-2235. Election and appointment procedure. The mode of nomination and election of all elective officers of such district to be voted for at any district election and the mode of appointment of a director by a mayor or a board of county commissioners shall be as provided in this part.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(1); amd. Sec. 42, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "this part" for "[7-13-2236 through 7-13-2253] and [7-13-2257 through 7-13-2259] and not otherwise" at the end of the section; made minor changes in grammar.

7-13-2236. General district election. The election of directors of the district shall be held every 4 years with the election for local government officials provided for in 13-1-104(2).

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 2, Ch. 257, L. 1974; amd. Sec. 1, Ch. 310, L. 1975; R.C.M. 1947, 16-4506(part); amd. Sec. 324, Ch. 571, L. 1979.

7-13-2237. Petition of nomination required for printing of name on ballot. The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions set forth in 7-13-2238 through 7-13-2247.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(2); amd. Sec. 388, Ch. 571, L. 1979.

7-13-2238. Form of petition. (1) The petition of nomination shall consist of not less than five individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION
Individual Certificate

State of .....
County of ....
Prect. No. .....

I, the undersigned, certify that I do hereby join in a petition for the nomination of ...., whose residence is at ...., for the office of .... of the .... district, to be voted for at the district election to be held in the.... district on the.... day of ...., 19..; and I further certify that I am a registered elector and an owner or lessee of real property within said district or a resident therein and am not at this time a signer of any other petition nominating any other candidate for the above-named office or, in case there are several places to be filled in the above-named office, that I have not signed more petitions than there are places to be filled in the above-named office; that my residence is at No. ..... street, ..., and that my occupation is ....

(Signed) ......

State of Montana
County of ......

...., being duly sworn, deposes and says that he is the individual who signed the foregoing certificate and that the statements therein are true and correct.

(Signed) ......

Subscribed and sworn to before me this .... day of ....., 19...

....
Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to...., at...., Montana.

(2) It shall be the duty of the election administrator to furnish, upon application, a reasonable number of forms of individual certificates of the above character. If the district lies in more than one county, the election administrator whose county contains the largest percentage of the territory of the district shall fulfill this function.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(3), (4); amd. Sec. 325, Ch. 571, L. 1979.

7-13-2239. Details relating to petition certificates. (1) Each certificate must be a separate paper.

(2) All certificates must be of uniform size as determined by the election administrator.

(3) Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more.

(4) Each certificate shall contain the name and address of the person to whom the petition is to be returned in case the petition is found insufficient.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 326, Ch. 571, L. 1979.

7-13-2240. Qualifications to sign petition. (1) Each signer must be a registered elector owning real property or residing within the district.

(2) No signer may at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office or, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in the office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected.

(3) Each signer must verify his certificate and make oath that the same is true before a notary public.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 327, Ch. 571, L. 1979.

7-13-2241. Presentation of petition of nomination. (1) A petition of nomination, consisting of not less than five individual certificates for any one candidate, may be presented to the election administrator not earlier than 65 days or later than 50 days before the election. The election administrator shall endorse thereon the date upon which the petition was presented to him.

(2) If the district lies in more than one county, the petition for nomination shall be presented to the election administrator whose county contains the largest percentage of the territory of the district and the election administrator shall fulfill all duties assigned to election administrators in elections under this part and part 23.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(6); amd. Sec. 328, Ch. 571, L. 1979.

7-13-2242. Examination of petition. (1) When a petition of nomination is presented for filing to the election administrator, he shall examine the same and ascertain whether or not it conforms to the provisions of 7-13-2237 through 7-13-2247. If found not to conform thereto, he shall in writing designate on the petition the defect or omission or reason why the petition cannot be filed and shall return the petition to the individual named as the individual to whom it may be returned in accordance with 7-13-2240.

(2) The petition may then be amended and again presented to the election administrator as in the first instance but in no case may a petition be presented later than 50 days before the election. The election administrator shall proceed to examine the petition as hereinbefore provided.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 329, Ch. 571, L. 1979.

7-13-2243. Assistance for election administrator. If necessary, the board of commissioners shall provide extra help to enable the election administrator to perform satisfactorily and promptly the duties imposed by this part.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part); amd. Sec. 330, Ch. 571, L. 1979; amd. Sec. 43, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "this part" for "[7-13-2235 through 7-13-2253]".

7-13-2244. Filing of petitions. (1) If either the original or amended petition of nomination is found sufficiently signed as hereinbefore provided, the election administrator shall file it.

(2) When a petition of nomination has been filed by the election administrator, it may not be withdrawn or added to, and no signatures may be revoked thereafter.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(10); amd. Sec. 331, Ch. 571, L. 1979.

7-13-2245. Withdrawal of signature from petition. (1) Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county election administrator a verified revocation of his signature before the filing of his petition by the election administrator and not otherwise.

(2) He shall then be at liberty to sign a petition for another candidate for the same office.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(8); amd. Sec. 389, Ch. 571, L. 1979.

7-13-2246. Withdrawal of candidacy. (1) Any individual who has been nominated as a candidate may, not later than 30 days before the day of election, cause his name to be withdrawn from nomination by filing with the election administrator a request therefor in writing, and no name withdrawn may be printed upon the ballot.

(2) If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than 30 days prior to the election.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(9); amd. Sec. 332, Ch. 571, L. 1979; amd. Sec. 44, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "who has been nominated" for "whose name has been presented under [7-13-2235 through 7-13-2248]".

7-13-2247. Preservation of petitions and certificates. The county clerk shall preserve in his office for a period of 2 years all petitions of nomination and all certificates belonging thereto filed under 7-13-2244.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(11).

7-13-2248. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part).

7-13-2249. Proclamation of election. The proclamation of election shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force and applicable thereto, except as otherwise provided herein.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(part).

7-13-2250 through 7-13-2253. Repealed. Sec. 407, Ch. 571, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-13-2250 through 7-13-2253. En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507.

7-13-2254. Provision for vote by corporate property owner. Where a corporation owns real property within the boundaries of the district, the president, vice-president, or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).

7-13-2255. Provision for vote by nonresident property owner. An elector owning real property within the district need not reside within the district in order to vote.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).

7-13-2256. Canvass of vote. (1) The board of county commissioners shall canvass the returns of the first election, and thereafter, except as provided in this part and part 23, the board of directors shall meet as a canvassing board and duly canvass the returns within 4 days after any district election, including any district bond election.

(2) If the district lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of said district shall canvass the returns of the first election.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 4, Ch. 257, L. 1974; amd. Sec. 3, Ch. 521, L. 1975; R.C.M. 1947, 16-4508(part).

7-13-2257. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(19).

7-13-2258. Effect of failure to qualify for office. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office as provided in 7-13-2262.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(20).

7-13-2259. Manner of making appointments. The mode of appointment of director or directors by a mayor or by a board of county commissioners shall be by certificate of appointment signed by said mayor or issued by said board of county commissioners and transmitted to the board of directors of said district.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 3, Ch. 257, L. 1974; amd. Sec. 2, Ch. 310, L. 1975; amd. Sec. 2, Ch. 521, L. 1975; amd. Sec. 3, Ch. 296, L. 1977; R.C.M. 1947, 16-4507(21).

7-13-2260. Provision for municipalities not having mayor. In municipalities in which there is no mayor, the duty imposed upon said officer by the provisions of this part and part 23 shall be performed by the president of the board of trustees or other chief executive of the municipality.

History: En. Sec. 32, Ch. 242, L. 1957; amd. Sec. 11, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4532(part).

7-13-2261. Recall of officers. Every incumbent of an elective office, whether elected by popular vote for a full term, elected by the board of directors to fill a vacancy, or appointed by a mayor or the board of commissioners for a full term, is subject to recall by the electors of any district organized under the provisions of this part and part 23 in accordance with Title 2, chapter 16, part 6.

History: En. Sec. 9, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4509; amd. Sec. 24, Ch. 251, L. 1979; amd. Sec. 333, Ch. 571, L. 1979.

7-13-2262. Vacancies on board of directors. Any vacancy in the board of directors, whether the vacant office is elective or appointive, shall be filled by the remaining directors.

History: En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part).

7-13-2263 through 7-13-2270 reserved.

7-13-2271. Organization of board of directors. (1) The board of directors shall hold its first meeting on the sixth Monday after the first general election for the election of directors as herein provided. It shall choose one of its members president and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may be called.

(2) The board shall establish rules for its proceedings.

History: En. Sec. 10, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4510(part).

7-13-2272. Duties of board president. The president shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors.

History: En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).

7-13-2273. Compensation of members of board. Each of the members of the board of directors shall receive a monthly salary that may not exceed the following amounts:

(1) $60 in districts with a population of no more than 500 persons;

(2) $80 in districts with a population that exceeds 500 but is no more than 5,000 persons; and

(3) $100 in districts with a population of more than 5,000 persons.

History: En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part); amd. Sec. 1, Ch. 46, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the monthly salaries for language that provided for $20 per meeting, no more than three meetings with pay, and no additional compensation.

Effective Date: Section 2, Ch. 46, L. 1981, provided: "This act is effective on passage and approval." Approved March 11, 1981.

7-13-2274. Conduct of business. (1) All legislative sessions of the board of directors, whether regular or special, shall be open to the public.

(2) A majority of the board shall constitute a quorum for the transaction of business.

(3) The board shall act only by ordinance or resolution.

History: En. Secs. 10, 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4510(part), 16-4511(part).

7-13-2275. Procedure relating to ordinances and resolutions. (1) The ayes and noes shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the total members of the board.

(2) The enacting clause of all ordinances passed by the board shall be in these words: "Be it ordained by the board of directors of .... district as follows:"

(3) All resolutions and ordinances shall be signed by the president of the board and attested by the secretary.

History: En. Sec. 11, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4511(part).

7-13-2276. Right of initiative and referendum. (1) Ordinances may be passed by the electors of any district organized under the provisions of this part and part 23 in accordance with the methods provided by the general laws of the state for direct legislation applicable to cities and towns.

(2) Ordinances may be disapproved and thereby vetoed by the electors of any such district by proceeding in accordance with the methods provided by the general laws of the state for protesting against legislation by cities and towns.

History: En. Secs. 29, 30, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4529, 16-4530.

7-13-2277. Appointment of administrative personnel. (1) The board of directors shall, at its first meeting or as soon thereafter as practicable, appoint by a majority vote a general manager, a secretary, and an auditor. No director shall be eligible to the office of general manager, secretary, or auditor.

(2) The general manager, secretary, and auditor shall receive such compensation as the board shall determine, and each shall serve at the pleasure of the board.

History: En. Sec. 12, Ch. 242, L. 1957; R.C.M. 1947, 16-4512.

7-13-2278. Duties of administrative personnel. (1) The general manager shall have full charge and control of the maintenance, operation, and construction of all works and systems of the district, with full power and authority to employ and discharge all employees and assistants at pleasure and prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform such other duties as may be imposed upon him by the board. The general manager shall report to the board in accordance with such rules as it may adopt.

(2) The secretary shall countersign all contracts on behalf of the district and perform such other duties as may be imposed by the board.

(3) The auditor shall be charged with the duty of installing and maintaining a system of auditing and accounting that shall completely and at all times show the financial condition of the district. He shall draw warrants to pay demands made against the district when such demands have been first approved by at least three members of the board and by the general manager.

History: **En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).**

7-13-2279. Performance bonds for administrative personnel. The general manager, secretary, and auditor and all other employees or assistants of said district who may be required to do so by the board of directors shall give bonds to the district, conditioned for the faithful performance of their duties, as the board from time to time may provide.

History: **En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).**

Part 23

County Water and/or Sewer Districts Continued

7-13-2301. Establishment of charges for services. (1) The board of directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer charges and the charges for the sale and distribution of water to all users.

(2) The board in the furnishing of water, sewer service, other services, and facilities shall fix such rate, fee, toll, rent, or other charge as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due.

(3) Notwithstanding any other section of this part or part 22 or limitation imposed therein and when the board has applied for and received from the federal government any money for the construction, operation, and maintenance of treatment services and works, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of treatment works to pay the portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial user's wastes.

History: **(1)En. Sec. 25, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4525, R.C.M. 1947; (2), (3)En. Sec. 26, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 17, Ch. 455, L. 1975; Sec. 16-4526, R.C.M. 1947; R.C.M. 1947, 16-4525, 16-4526.**

7-13-2302. Levy of taxes to meet bond obligations and other expenses. (1) If from any cause the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district, then the board of directors must (at least 15 days before the first day of the month in which the board of county commissioners of the county, city and county, or counties in which such district is located are required by law to levy the amount of taxes required for county or city and county purposes) furnish to the board or boards of county commissioners and to the auditor or auditors, respectively, an estimate in writing:

(a) of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due;

(b) of the amount of money required to establish reasonable reserve funds for either of said purposes, together with a description of the lands benefited thereby, as stated by the board of directors in the resolution declaring the necessity to incur such bonded indebtedness; and

(c) of the amount of money required by the district for any other purpose set forth in this section.

(2) The board of county commissioners of such county or city and county, annually, at the time and in the manner of levying other county or city and county taxes, must:

(a) until any such bonded debt is fully paid, levy upon the lands so benefited and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof, to be known as the ...... district bond tax; and

(b) until all other expenses or claims are fully paid, levy upon all of the lands of the district and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof, to be known as the .... district water and/or sewer tax.

(3) Such taxes for the payment of any such bonded debt shall be levied on the property benefited thereby, as stated by the board of directors in the resolution declaring the necessity therefor, and all taxes for other purposes shall be levied on all property in the territory comprising the district.

History: (1), (2)En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; Sec. 16-4527, R.C.M. 1947; (3)En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; Sec. 16-4528, R.C.M. 1947; R.C.M. 1947, 16-4527(part), 16-4528(part).

7-13-2303. Method of assessment. (1) When the amount of money required for any purpose enumerated in 7-13-2302 has been determined:

(a) each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its area bears to the total area of all of the lands to be assessed; or

(b) said assessment may, at the option of the board or boards of county commissioners, be based upon the taxable valuation as stated in the last completed county assessment roll of the lots or parcels of land, exclusive of improvements thereon, within said district; and in which case, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed.

(2) However, where the district lies in more than one county, the same method of assessment shall be used by each board of county commissioners.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2304. Notice of intention to levy tax. (1) When the written estimate of the amount of money required has been delivered to the board of county commissioners, said board shall give notice of its intention to levy and collect a tax sufficient for the payment thereof.

(2) Such notice shall be given:

(a) by posting notice thereof in five public places within the county and within the boundaries of the lands upon which the tax is to be levied;

(b) by publishing a copy of the notice once each week for 2 consecutive weeks in a newspaper published in each county wherein the district is located; and

(c) by forwarding, by regular first-class mail or registered or certified mail at least 10 days prior to the hearing provided for in 7-13-2306(4), a copy of the notice addressed to the owners of taxable real property within the district as shown by the current assessment book on file in the office of the assessor of the county or counties the boundaries of which include taxable real property of the district.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2305. Legal sufficiency of notice. The legislature hereby finds, determines, and declares that the giving of notice in accordance with 7-13-2304(2) is reasonably calculated to inform the owners of taxable real property located within the boundaries of the district of the hearing provided for in 7-13-2306(4) and that the giving of any further notice is impracticable and is unnecessary to the assurance of due process of law to such property owners.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2306. Contents of notice — hearing and protest. The notice required by 7-13-2304 shall state:

(1) the amount of money required;

(2) the method of assessment which the board or boards of county commissioners intend to employ;

(3) the boundaries or description of the lands to be assessed, which boundaries or description may be recited in full or may be given by reference to any instrument on file or of record in the office of the clerk and recorder, treasurer, or assessor of the county or counties in which the district or part thereof is situated; and

(4) the time when and the place where the board or boards of county commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining thereto.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2307. Hearing on protest to levy of tax. (1) The hearing provided for in 7-13-2306(4) shall be had no less than 15 days after the last publication of the notice.

(2) At the time and place designated for said hearing, any owner of property situated within the area to be assessed may appear and protest the levy of the tax or any matter pertaining thereto. All protests must be heard, considered, and ruled upon by the board of county commissioners.

(3) The board of county commissioners may adjourn said hearing from time to time.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2308. Payment of tax under protest — action to recover. (1) Where such tax is deemed unlawful for any reason by the person whose property is taxed, whether or not he has protested the same at the hearing provided for in 7-13-2306(4), he may pay the tax or the installments thereof under protest in the manner provided by 15-1-402 and, thereupon and within the time prescribed and in the manner provided by 15-1-402, may commence an action to recover such tax or installments and in such action contest and litigate the payment of such tax on the same grounds and for the same reasons that he has stated in his written protest and for no other reasons and on no other grounds.

(2) All of the provisions of 15-1-402 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 296, L. 1977; R.C.M. 1947, 16-4527(part).

7-13-2309. Collection of taxes. (1) All taxes referred to in 7-13-2302(3) shall be collected at the same time and in the same manner and form as county taxes are collected and when collected shall be paid to the district for which such taxes were levied and collected.

(2) Such taxes, if not paid, shall become delinquent at the same time as do county taxes.

History: En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; R.C.M. 1947, 16-4528(part).

7-13-2310. Taxes to be lien. (1) If such taxes are levied for the payment of a bonded debt for the benefit of certain property within the district, as stated in the aforesaid resolution of the board of directors, such taxes shall be a lien upon each lot or parcel of said property to the extent of the levy of said taxes upon said lot or parcel. All taxes for other purposes shall be a lien upon each lot or parcel of land within the entire area comprising the district, to the extent of the levy of said taxes upon said lot or parcel.

(2) Said taxes, whether for the payment of a bonded indebtedness or for other purposes, shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for in the enforcement of liens for state and county taxes.

History: En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959; R.C.M. 1947, 16-4528(part).

7-13-2311. Designation of fund depositary. The board of directors shall designate a depositary or depositaries to have the custody of the funds of the district, all of which depositaries shall give security sufficient to secure the district against possible loss and shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe.

History: En. Sec. 16, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4516(part).

7-13-2312 through 7-13-2320 reserved.

7-13-2321. Procedure to incur bonded indebtedness. Whenever the board of directors deems it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, and the proposition to be submitted to the electors.

History: En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971; R.C.M. 1947, 16-4517(part).

7-13-2322. Term of bonds. The maximum term of bonds shall not exceed 40 years.

History: En. Sec. 17, Ch. 242, L. 1957; amd. Sec. 26, Ch. 234, L. 1971; R.C.M. 1947, 16-4517(part).

7-13-2323. Election on question of incurring bonded indebtedness. The board of directors shall fix a date upon which an election shall be held for the purpose of authorizing the bonded indebtedness to be incurred.

History: En. Sec. 18, Ch. 242, L. 1957; R.C.M. 1947, 16-4518; amd. Sec. 334, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-13-2324. Notice of election on incurring bonded indebtedness. (1) The board of directors shall give notice of the holding of the election. The notice shall contain the resolution adopted by the board of directors of the district, boundaries of voting precincts, which shall include only the lands to be benefited as stated in the resolution, and the location of polling places.

(2) The notice shall be published as provided in 13-1-108.

History: (1)En. Sec. 19, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; Sec. 16-4519, R.C.M. 1947; (2)En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 257, L. 1974; amd. Sec. 4, Ch. 521, L. 1975; amd. Sec. 4, Ch. 296, L. 1977; Sec. 16-4520, R.C.M. 1947; R.C.M. 1947, 16-4519(part), 16-4520(part); amd. Sec. 335, Ch. 571, L. 1979.

7-13-2325. Qualifications to vote on question of incurring bonded indebtedness. Every registered elector owning or residing upon real property within such voting precincts, but no others, shall be entitled to vote at the election.

History: En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 5, Ch. 257, L. 1974; amd. Sec. 4, Ch. 521, L. 1975; amd. Sec. 4, Ch. 296, L. 1977; R.C.M. 1947, 16-4520(part); amd. Sec. 336, Ch. 571, L. 1979.

7-13-2326. Repealed. Sec. 407, Ch. 571, L. 1979.
History: En. Sec. 21, Ch. 242, L. 1957; R.C.M. 1947, 16-4521(part).

7-13-2327. Entry of bond election results. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results.
History: En. Sec. 21, Ch. 242, L. 1957; R.C.M. 1947, 16-4521(part).

7-13-2328. Sufficient vote required to issue bonds. If from such returns it appears that 60% or more of the votes cast on the question at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may by resolution, at such time or times as it considers proper, provide for the form and execution of the bonds and for the issuance of any part thereof.
History: En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969; R.C.M. 16-4522(part); amd. Sec. 337, Ch. 571, L. 1979.

7-13-2329. Sale of bonds. The board of directors may sell or dispose of the bonds issued pursuant to 7-13-2328 at such times or in such manner as it may deem to be to the public interest.
History: En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969; R.C.M. 16-4522(part).

7-13-2330. Status of bonds — tax exemption. Any bonds issued by any district organized under the provisions of this part and part 22 are hereby given the same force, value, and use as bonds issued by any municipality and shall be exempt from all taxation within the state of Montana.
History: En. Sec. 23, Ch. 242, L. 1957; R.C.M. 1947, 16-4523.

7-13-2331 through 7-13-2340 reserved.

7-13-2341. Addition of land to district. (1) Except as provided in subsection (5), any portion of any county, any municipality, or both, may be added to any district organized under the provisions of this part and part 22 at any time upon petition presented in the manner provided in this part and part 22 for the organization of such district.

(2) The petition may be granted by ordinance of the board of directors of such district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such district and in the proposed addition at a general or special election held, as provided in this part and part 22, within 70 days after the adoption of such ordinance.

(3) If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such district is located. Upon the receipt of such last-mentioned certificate, the secretary of state shall within 10 days issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy of such certificate shall be transmitted to and filed with the county clerk of the county in which such district is situated.

(4) From and after the date of such certificate, the territory named therein shall be deemed added to and form a part of said district with all the rights, privileges, and powers set forth in this part and necessarily incident thereto.

(5) If the board of directors determines that a district has a sewer facility with a capacity greater than required to meet the needs of the current district, it may by ordinance, upon petition of contiguous property owners, expand the district to include land in an unincorporated area, to the extent of excess capacity, without complying with subsections (1) and (2). However, if the board determines that an election should be held or if 40% or more of the members of the district petition for an election, compliance with subsections (1) and (2) is required.

History: En. Sec. 31, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4531(part); amd. Sec. 1, Ch. 411, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "Except as provided in subsection (5)" at the beginning of (1); added subsection (5) relating to adding contiguous land.

Effective Date: Section 2, Ch. 411, L. 1981, provided: "This act is effective on passage and approval." Approved April 17, 1981.

7-13-2342. Consolidation of county water and/or sewer districts. (1) Two or more districts organized under the provisions of this part and part 22 may consolidate at any time, upon petitions submitted to the board of directors of each such district. Such petitions shall be in the form required for petitions for the organization of districts. Each such petition shall be signed by not less than 10% of the registered voters of the territory included within said district.

(2) Said petitions may be granted by ordinance of the board of directors of each of said districts. Such ordinances shall be submitted for adoption or rejection to the vote of the electors in such districts at general or special elections held, as provided in this part and part 22, within 70 days after the adoption of such ordinances.

(3) If such ordinances are approved, the president and secretary of the boards of directors of each of said districts shall certify that fact to the secretary of state and to the county clerk of the county or counties in which such districts are located. Upon the receipt of said certificate, the secretary of state shall within 10 days issue his certificate, reciting the passage of said ordinances and the consolidation of said districts. A copy of such certificate shall be transmitted to and filed with the county clerk of each county in which such consolidated district is situated.

(4) From and after the date of such certificate, the districts shall be deemed to be consolidated and shall consist of one district with all the rights, privileges, and powers set forth in this part and part 22 and necessarily incident thereto.

(5) The number and manner of selection and election of directors of the consolidated district shall be the same as the number and manner of selection and election of directors of newly organized districts.

History: En. Sec. 31, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4531(part).

7-13-2343. Exclusion of land from district — initiated by petition. Any territory included within any district formed under the provisions of this part and part 22 and not benefited in any manner by such district or its continued inclusion therein may be excluded therefrom by order of the board of directors of such district upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2344. Details relating to petition to exclude land from district. (1) The petition referred to in 7-13-2343 shall describe the territory sought to be excluded, shall set forth that such territory is not benefited in any manner by said district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district.

(2) Such petition shall be filed with the secretary of the district and shall be accompanied by a deposit with such secretary of the sum of $100 to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified copy of the order provided for in 7-13-2346. Any unconsumed balance shall be returned to the petitioner.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2345. Hearing and notice on petition to exclude land. (1) Upon the filing of such petition with the secretary of the district, he shall call a meeting of the board of directors of the district at a time not less than 25 days or more than 50 days after the filing of the petition and cause a notice of the filing of such petition to be published once each week for 2 consecutive weeks in a newspaper of general circulation published in each county in which the district is situated. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district and shall state the time of the hearing and the place thereof.

(2) Any landowner or taxpayer within the district shall have the right to appear at said hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing.

(3) (a) Except as provided in subsection (3)(b), the place of the hearing shall be the regular meeting place of the board of directors of the district.

(b) The board may adjourn the hearing to a more convenient meeting place within the district.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2346. Decision on petititon to exclude land. (1) If upon such hearing the board of directors determines that it is for the best interests of the district that the lands mentioned in the petition or some portion thereof be excluded from the district or if it appears that such lands or some portion thereof will not be benefited by their continued inclusion in the district, then the board shall make an order that such lands or such portion thereof be excluded from the district, such order to describe specifically the lands so excluded.

(2) A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county

or counties in which the district is situated, and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2347. Effect of order excluding land. From the time of the making of the order of exclusion, the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded.

History: En. Sec. 33, Ch. 242, L. 1957; amd. Sec. 12, Ch. 167, L. 1965; amd. Sec. 1, Ch. 263, L. 1967; amd. Sec. 6, Ch. 296, L. 1977; R.C.M. 1947, 16-4533(part).

7-13-2348. Exclusion of land from district — initiated by board of directors. (1) The board of directors of any district formed under the provisions of this part and part 22 may itself initiate the proceedings for the exclusion from the district of any land or lands which it may not be for the best interests of the district to be included or which may not be benefited in any manner by their continued inclusion therein.

(2) Such proceedings shall be initiated by the board by the passage of a resolution:

(a) requiring all persons interested to appear and show cause before the board, at a time and place specified, why such lands (describing them) should not be excluded from the district; and

(b) fixing a time and place for such hearing and directing the secretary of the district to give notice of the passage of such resolution and of such hearing.

(3) Upon the passage of such resolution, the secretary of the district shall give notice thereof and of the time and place of such hearing in the manner hereinbefore prescribed for notice of hearing upon petition by a landowner or landowners, and thereafter all proceedings shall be had in the manner and with the effect herein provided for proceedings upon a petition by a landowner or landowners. The time of hearing fixed by the board by its resolution hereinbefore mentioned shall be not less than 25 days or more than 50 days after the passage of such resolution, and the place of hearing so fixed shall be a convenient place within the district.

(4) The final action of the board of directors under this section shall be subject to the referendum by the electors of the district according to 7-13-2276(2).

History: En. Sec. 34, Ch. 242, L. 1957; amd. Sec. 1, Ch. 263, L. 1967; R.C.M. 1947, 16-4534.

Part 24

Garbage and Ash Collection Districts

7-13-2401. Reestablishment of certain garbage and ash collection districts. Any county that created a garbage and ash collection district pursuant to the provisions of subdivision 29, section 1, chapter 100, Laws of 1931, as amended, prior to the repeal of said section may continue to operate a garbage and ash collection district pursuant to this part.

History: En. 16-1031.1 by Sec. 1, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.1.

7-13-2402. Authority to create garbage and ash collection districts. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to create, abolish, and change garbage and ash collection districts in thickly settled areas outside of the limits of incorporated cities and towns.

History: **En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).**

7-13-2403. Creation of districts to be pursuant to rules. (1) Such districts shall be created under rules to be promulgated by the board of county commissioners.

(2) The rules shall provide for petition on the part of a majority of taxpayers residing within such areas and for the survey of proposed districts by the county health officer as to boundaries and methods for disposal of garbage and ashes within such districts.

History: **En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).**

7-13-2404. Operation of district. (1) When such a district has been created under the authority of this part, the county commissioners shall be authorized and empowered to provide for the maintenance and support thereof and for the purchase or leasing of land necessary for such purpose.

(2) The county commissioners may provide for the collection and disposal of garbage and ashes for such districts by entering into contracts with individual contractors or firms to perform such services under a system of rates approved by the commissioners.

History: **En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).**

7-13-2405. Determination of rates for collection services. The rates authorized by 7-13-2404(2) shall be applied on a fair and equal basis to all persons utilizing such garbage collection service within a district, and all rates so established shall be in relation to the amount and matter of collection and disposal service provided to the various types of customers within a district. However, in no event shall any fee exceed the amount of $3 per month for a family residential unit.

History: **En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).**

7-13-2406. Assessment authorized. (1) The board of county commissioners may collect the funds necessary to operate said district, as provided in this part, by placing a special assessment on the owners of the real property benefited by such service and shall collect the same with the general taxes.

(2) Such special assessment shall be a lien on said property so assessed.

History: **En. 16-1031.2 by Sec. 2, Ch. 73, L. 1974; R.C.M. 1947, 16-1031.2(part).**

Part 25

Television Districts

7-13-2501. Authorization to create television districts. (1) Any area of the state may organize as a television district for the performance of functions provided for in this part.

(2) A television translator district may include a part or all of any county or may include areas in more than one county and may include any municipality located within such county or counties.

History: En. Secs. 2, 3, Ch. 198, L. 1961; R.C.M. 1947, 70-409, 70-410.

7-13-2502. Purposes of television district. The purposes of a television district shall be to serve the public interest, convenience, and necessity in the construction, maintenance, and operation of television translator stations and any system necessary thereto by appropriate electric or electronic means for television program distribution, but said purposes are not meant to include the construction or operation of community antenna systems, commonly known and referred to as cable TV systems.

History: En. Sec. 1, Ch. 198, L. 1961; R.C.M. 1947, 70-408.

7-13-2503. Petition to create district. (1) A petition to form a district shall be presented to the county clerk and recorder of each of the counties in which any portion of the area is situated. Petitions shall be signed by at least 51% of the registered electors who are residents of the proposed district.

(2) The petition shall state the objects of the district and designate the boundaries thereof by section and the approximate number of people to be benefited thereby and shall contain a brief description of the proposed system, including type of construction, location, and approximate cost of the installation. It shall also state that the proposed district will be conducive to the public interest, convenience, and necessity. It shall request that it be organized as a television district.

History: En. Sec. 4, Ch. 198, L. 1961; R.C.M. 1947, 70-411; amd. Sec. 1, Ch. 479, L. 1979.

7-13-2504. Filing of petition. (1) Such petition shall be filed with the county clerk and recorder of all counties in which the signers on the petition are located. If the petition is filed with more than one county clerk and recorder, each petition shall state the number of signers on it and the name of the county where the petition containing the most signers is filed.

(2) (a) At the time of filing the petition, the sponsors thereof shall cause to be deposited with the county clerk and recorder a sufficient sum of money to cover the cost of publication of all notices provided for in 7-13-2506.

(b) If the notices are not published, the deposit shall be returned to whoever deposited the funds. If there is any surplus remaining after paying for such publication as herein provided, it shall be returned to the original depositor or depositors. If a district is created, the fees so expended are an obligation of the district and shall be repaid by the district to the depositors.

History: En. Secs. 5, 6, Ch. 198, L. 1961; R.C.M. 1947, 70-412(part), 70-413(part).

7-13-2505. Processing of petition. (1) Upon the filing of such petition or petitions, the county clerk and recorder shall examine the petition and certify whether the required number of signers are found thereon. After the examination of the petition, the county clerk and recorder of any county containing the least number of signers, if more than one county is involved, shall transmit the petition to the county clerk and recorder of the county containing the most signers.

(2) Within 30 days following the receipt of such petitions, the county clerk and recorder in the county containing the most names on the petitions shall transmit the petitions to the board of county commissioners of the county in which the greater number of petitioners reside, together with his certificate and the certificates of any other county clerk and recorder as to the sufficiency thereof.

History: **En. Sec. 5, Ch. 198, L. 1961; R.C.M. 1947, 70-412(part).**

7-13-2506. Notice of petition and hearing. Upon receipt of a duly certified petition, the board of county commissioners shall cause the text of the petition to be published once a week for at least 3 consecutive weeks in a newspaper of general circulation within the county where the petition is presented. If any portion of the proposed district lies in another county, the petition and notice shall likewise be published in that county. No more than five names attached to the petition shall appear in the publication and notice, but the number of signatures shall be stated. With the publication of the petition, there shall be published a notice of the time of the meeting of the county commissioners when the petition will be considered, stating that all persons interested may appear and be heard.

History: **En. Sec. 6, Ch. 198, L. 1961; R.C.M. 1947, 70-413(part).**

7-13-2507. Hearing on petition. At the time set for hearing such petition or petitions, the board of county commissioners shall hear all persons who desire to be heard relative to the creation of a television district. The board may, if they so desire and it appears to be desirable, adjourn the meeting for not to exceed 30 days in time to further hear the petitioners and protestants, if any.

History: **En. Sec. 7, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part).**

7-13-2508. Decision by county commissioners. After such hearing or hearings, the board of county commissioners shall adopt a resolution either creating the proposed television district or denying the petition.

History: **En. Sec. 7, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part).**

7-13-2509. Resolution to create district. (1) If the board of county commissioners desires to create the television district, they shall adopt a resolution describing the proposed system, including type of construction, location, and type and approximate cost of any installation to be made, describing the boundaries of such district and finding that the district will be conducive to the public interest and convenience, and thereby such district shall be created.

(2) If the board passes a resolution creating such district, they shall name the district "........ television district" and file a copy of the order creating such district, if only one county is included therein, with the county clerk and recorder. If portions of more than one county are included in said district, a copy of the order shall be filed in each county. A copy of the order shall be filed with the secretary of state, for which he shall receive a fee of $5.

History: **En. Secs. 7, 8, Ch. 198, L. 1961; R.C.M. 1947, 70-414(part), 70-415(part).**

7-13-2510. *(Temporary)* **Powers of district.** A television district organized under this part, acting through its board of trustees herein provided for, may:

(1) perform all the acts and take all the necessary or proper steps to assure that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within such service area shall be supplied by means of an appropriate electrical or electronic system for television program distribution, such authorized system to provide such flexibility as to permit radical improvements in technical quality without rendering inoperative receivers therein, but discontinuance of service by the district for improvements or repairs for a temporary period shall not be construed as rendering inoperative;

(2) if necessary or proper in the furtherance of the objects of this part, acquire, build, construct, repair, own, maintain, and operate any necessary stations transmitting simultaneous visual and aural signals intended to be received by the general public, relay stations, pickup stations, or any other necessary electrical or electronic system;

(3) make contracts to compensate any owner of land or other property for the use of such property for the purposes of this part;

(4) make contracts with the United States, any state or municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) acquire, by gift, devise, bequest, lease, or purchase, real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;

(6) to make contracts of any lawful nature (including labor contracts or those for employees' benefits) and employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this part;

(7) issue warrants, payable at the time stated therein, to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board, payable annually or semiannually as the board may prescribe;

(8) contract indebtedness or borrow money for corporate purposes and issue revenue bonds therefor to be repaid from rates and charges, bearing interest at a rate not exceeding the limitation of 17-5-102 payable semiannually, the bonds not to be sold for less than par and accrued interest;

(9) prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this part;

(10) prescribe such installation or ready-to-serve charges to be used for any costs connected with preparation, acquisition, or construction of the system;

(11) apply for, accept, and be the holder of any permit or license issued by or required under federal or state law; and

(12) provide FM translator services if authorized as provided in 7-13-2512.

7-13-2510. *(Revived July 1, 1983)* **Powers of district.** A television district organized under this part, acting through its board of trustees herein provided for, may:

(1) perform all the acts and take all the necessary or proper steps to assure that there will be a fair, efficient, and equitable distribution of television services within the area in order that all persons within such service area shall be supplied by means of an appropriate electrical or electronic system for television program distribution, such authorized system to provide such flexibility as to permit radical improvements in technical quality without rendering inoperative receivers therein, but discontinuance of service by the district for improvements or repairs for a temporary period shall not be construed as rendering inoperative;

(2) if necessary or proper in the furtherance of the objects of this part, acquire, build, construct, repair, own, maintain, and operate any necessary stations transmitting simultaneous visual and aural signals intended to be received by the general public, relay stations, pickup stations, or any other necessary electrical or electronic system;

(3) make contracts to compensate any owner of land or other property for the use of such property for the purposes of this part;

(4) make contracts with the United States, any state or municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) acquire, by gift, devise, bequest, lease, or purchase, real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;

(6) to make contracts of any lawful nature (including labor contracts or those for employees' benefits) and employ engineers, laboratory personnel, attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this part;

(7) issue warrants, payable at the time stated therein, to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board, payable annually or semiannually as the board may prescribe;

(8) contract indebtedness or borrow money for corporate purposes and issue revenue bonds therefor to be repaid from rates and charges, bearing interest at a rate not exceeding 7% per annum payable semiannually, the bonds not to be sold for less than par and accrued interest;

(9) prescribe tax rates for the providing of services throughout the area in accordance with the provisions of this part;

(10) prescribe such installation or ready-to-serve charges to be used for any costs connected with preparation, acquisition, or construction of the system;

(11) apply for, accept, and be the holder of any permit or license issued by or required under federal or state law; and

(12) provide FM translator services if authorized as provided in 7-13-2512.

History: En. Sec. 13, Ch. 198, L. 1961; R.C.M. 1947, 70-420(part); amd. Sec. 2, Ch. 13, L. 1979; amd. Sec. 2, Ch. 479, L. 1979; amd. Sec. 5, Ch. 500, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "the limitation of 17-5-102" for "7% per annum" in (8).

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

Amendment Superseded: Ch. 13, L. 1979, amended 7-13-2510 and 7-13-2527 through 7-13-2529. Section 12, Ch. 479, L. 1979, repealed

Ch. 13. Reference to Ch. 13 appears in the histories of 7-13-2510 and 7-13-2527 through 7-13-2529 although the changes made in Ch. 13 were not made in the section text.

7-13-2511. Prohibition on operation of cable TV systems. A television district organized under this part may not perform any acts or take any steps to construct or operate community antenna systems, commonly known and referred to as cable TV systems.

History: En. Sec. 13, Ch. 198, L. 1961; R.C.M. 1947, 70-420(part).

7-13-2512. Authorization for FM translator. (1) A television district may construct and operate a broadcast FM translator facility (88 to 108 megahertz) as provided in this section.

(2) (a) A request to provide FM translator services may be initiated by a petition signed by at least 51% of the registered electors who are residents of the television district and presented to the board of county commissioners which initially established the district. The petition, its filing, and its processing are governed by 7-13-2503, 7-13-2504, and 7-13-2505.

(b) Upon receiving a certified petition, the board of county commissioners shall give notice and hold a hearing as provided in 7-13-2506 and 7-13-2507. After the hearing, the board of county commissioners shall approve or deny the petition by resolution. If the decision is to approve the petition, the resolution shall authorize the board of trustees of the district to provide the requested services and shall describe the proposed system, including the type of construction, proposed location, and estimated costs.

History: En. Sec. 1, Ch. 13, L. 1979; En. Sec. 10, Ch. 479, L. 1979.

Compiler's Comments

Codification. Sec. 6, Ch. 13, L. 1979, provided: "It is intended that section 1 be codified as an integral part of Title 7, chapter 13, part 25, and the provisions of Title 7, chapter 13, part 25, apply to section 1."

Codification. Sec. 11, Ch. 479, L. 1979, provided: "It is intended that section 10 be codified as an integral part of Title 7, chapter 13, part 25, and the provisions of Title 7, chapter 13, part 25, apply to section 10."

7-13-2513 through 7-13-2520 reserved.

7-13-2521. Appointment of board of trustees. The board of county commissioners, upon the creation of said district and as a part of the order creating the district, shall appoint a board of three trustees to administer the affairs of the district.

History: En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part).

7-13-2522. Qualifications for trustee. Each of said trustees shall be a resident of the district.

History: En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part); amd. Sec. 3, Ch. 479, L. 1979.

7-13-2523. Term of office. (1) The trustees so appointed upon creation of such district shall be appointed for staggered terms of 1, 2, and 3 years. If more than one county is involved, one of said trustees shall be appointed from the county containing that portion of the district with the fewest residents, and such trustee shall be given the 3-year term. Said trustees so appointed shall hold office for the term of their respective appointment or until their successors are appointed and qualified.

(2) At the end of the respective terms of said trustees, the board of county commissioners shall appoint a new trustee for a 3-year term.

History: En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part); amd. Sec. 4, Ch. 479, L. 1979.

7-13-2524. Vacancies. In case of a vacancy by death, resignation, removal from the district, or otherwise, a trustee shall be appointed by the board of county commissioners to fill such vacancy to the end of the term of such trustee.

History: En. Sec. 9, Ch. 198, L. 1961; R.C.M. 1947, 70-416(part).

7-13-2525. Compensation of trustees. The board of trustees of the district shall serve without compensation but will be reimbursed for reasonable expenses incurred in the operation of the television district.

History: En. Sec. 14, Ch. 198, L. 1961; R.C.M. 1947, 70-421.

7-13-2526. Meetings of trustees. (1) The board of trustees shall meet once a month at a regular time and place to transact the business of the district. The time and place shall be fixed by the trustees, and any change in the time and place of meetings must be given by publication of notice in a newspaper most likely to give notice to the taxpayers within such district.

(2) All meetings shall be held at some place within the area of the television district. All such meetings shall be open in their entirety to the public.

History: En. Sec. 16, Ch. 198, L. 1961; R.C.M. 1947, 70-423.

7-13-2527. List of television owners. (1) A copy of the order creating the district shall be delivered to the county assessor of each county within the district.

(2) The assessor shall, on or before August 1 of any given year, prepare and certify a list of all persons owning television sets within such district and deliver a copy of such list to the board of trustees of said district.

History: En. Sec. 10, Ch. 198, L. 1961; R.C.M. 1947, 70-417; amd. Sec. 3, Ch. 13, L. 1979; amd. Sec. 5, Ch. 479, L. 1979.

7-13-2528. Financial administration of district. (1) The board of trustees shall, from any list prepared by the county assessor as required by 7-13-2527, remove the names of any persons who have claimed exemption under this part and shall prepare a budget for the expenses for the next year.

(2) The budget, together with the list of such persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this part, shall be presented by September 1 to the board of county commissioners, who shall levy the tax requested by said trustees. The board shall levy such tax in accordance with the request herein mentioned. In preparing the budget, the board of trustees shall maintain separate budgets for television services and for FM translator services and shall specify the tax to be levied on property owners for these services. The tax shall be certified to the county clerk and recorder and entered on the assessment books as against such persons and collected by the county treasurer as all other taxes are collected.

(3) The county treasurer shall be the treasurer for said district and hold said taxes, as collected, in a separate fund to be disbursed by him upon warrants drawn by the trustees, at least two of whom shall sign any warrant for the disbursement of such funds by the county treasurer.

History: **(1), (2)En. Sec. 11, Ch. 198, L. 1961; amd. Sec. 1, Ch. 79, L. 1975; Sec. 70-418, R.C.M. 1947; (3)En. Sec. 12, Ch. 198, L. 1961; Sec. 70-419, R.C.M. 1947; R.C.M. 1947, 70-418, 70-419; amd. Sec. 4, Ch. 13, L. 1979; amd. Sec. 6, Ch. 479, L. 1979.**

7-13-2529. Exemption for nonbenefited taxpayers. (1) The taxpayers in the television district who do not receive the signal of the television translator station or who receive direct reception from the television station from which the television translator repeats a signal or receive service through the medium of a community antenna system on which they are a subscriber in good standing will be exempt from the payment of the tax for the support of the television services of the television district, provided they file an affidavit setting forth any of the grounds above mentioned. The affidavit shall be filed with the board of trustees, who shall upon the receipt of such affidavit have the names of such persons so exempted from the tax for television services stricken from the list of taxpayers certified to the board of county commissioners. The exempted persons shall not be liable for such tax.

(2) A similar exemption is available with respect to FM translator services. The procedure provided in subsection (1) shall be utilized for the FM exemption.

(3) Any person or persons who shall make a false or fraudulent claim for exemption as provided in this section shall be guilty of a misdemeanor.

History: **En. Secs. 15, 17, Ch. 198, L. 1961; R.C.M. 1947, 70-422, 70-424; amd. Sec. 5, Ch. 13, L. 1979; amd. Sec. 7, Ch. 479, L. 1979.**

7-13-2530 through 7-13-2540 reserved.

7-13-2541. Procedure to annex contiguous areas. The boundaries of a television district created by authority of this part may be altered and outlying areas be annexed from territory contiguous thereto in the following manner:

(1) A petition shall be signed by at least 51% of the registered electors who are residents of the area to be annexed.

(2) The petition shall designate the boundaries of the contiguous area to be annexed and ask that it be annexed to the existing television district.

(3) The petition shall be transmitted to the clerk and recorder, and the hearing and notice thereof shall be the same as provided by 7-13-2504 through 7-13-2507.

(4) After the hearing, the board of county commissioners shall adopt a resolution either annexing the area to the existing television district or denying the petition.

History: **En. Sec. 1, Ch. 48, L. 1963; R.C.M. 1947, 70-426; amd. Sec. 8, Ch. 479, L. 1979.**

7-13-2542. Procedure to abandon district. (1) If at any time a petition for abandonment of the television district, signed by at least 51% of the registered electors who are residents of the district, is filed with the board of trustees, the board of trustees shall forthwith notify the board or boards of county commissioners which created the district. Such board or boards of county commissioners shall by resolution immediately declare the district abandoned.

(2) All properties and money remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the credit of the general fund of the county. If the abandoned district embraced areas in more than one county, properties and money remaining after the satisfaction of all debts and obligations of such abandoned district shall be deposited to the credit of the general funds of such counties in proportion to the population of the portion of the district located in each county.

History: **En. Sec. 18, Ch. 198, L. 1961; R.C.M. 1947, 70-425; amd. Sec. 9, Ch. 479, L. 1979.**

Parts 26 through 40 reserved

Part 41

General Provisions Related to Municipal Utility Services

7-13-4101. Authority to permit laying of utility mains. (1) The city or town council has power to permit the use of the streets and alleys of the city or town for the purpose of laying down gas, water, and other mains, but no excavations must be made for such purpose without the permission of the council or its authorized officer.

(2) The streets and alleys must be placed in as good condition by the person or corporation making the excavation as they were before the excavation was made and the mains laid down. In default thereof, the council may order the same to be done at the expense of such person or corporation.

History: **En. Subd. 73, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.72, R.C.M. 1935; R.C.M. 1947, 11-975.**

7-13-4102. Authority to acquire natural gas system — indebtedness permitted. (1) The city or town council has power to contract an indebtedness of a city or town upon the credit thereof by borrowing money or issuing bonds for the construction, purchase, or development of an adequate supply of natural gas and to construct or purchase a system of gaslines for the distribution thereof to the inhabitants of the city or town or vicinity.

(2) No money may be borrowed or bonds issued for the purposes specified in this section until the proposition has been submitted to the vote of the taxpayers of the city or town affected thereby and the majority vote cast in its favor.

History: **En. Sec. 1, Ch. 128, l. 1927; re-en. Sec. 5039.85, R.C.M. 1935; amd. Sec. 22, Ch. 566, L. 1977; R.C.M. 1947, 11-988(part).**

7-13-4103. Limitation on indebtedness for acquisition of natural gas system. The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed 17% of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes.

History: En. Sec. 1, Ch. 128, l. 1927; re-en. Sec. 5039.85, R.C.M. 1935; amd. Sec. 22, Ch. 566, L. 1977; R.C.M. 1947, 11-988(part); amd. Sec. 49, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Increased 11% to 17%.

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-13-4104. Inspection and measurement of gas, light, and electric or other power systems. The council of any incorporated city or town shall have power by ordinance to provide for and regulate the inspection and the measurement of gas, light, and electric or other power sold within its limits or brought into or carried through any such city or town.

History: En. Sec. 1, Ch. 57, L. 1907; Sec. 3260, Rev. C. 1907; re-en. Sec. 5040, R.C.M. 1921; re-en. Sec. 5040, R.C.M. 1935; R.C.M. 1947, 11-989.

7-13-4105. Regulation of vaults, cisterns, hydrants, pumps, sewers, and gutters. The city or town council has power to regulate the construction, use, and repair of vaults, cisterns, hydrants, pumps, sewers, and gutters.

History: En. Subd. 24, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.23, R.C.M. 1935; R.C.M. 1947, 11-926.

7-13-4106. Erection of poles, wires, rods, and cables. The city or town council has power to regulate or suppress the erection of poles and the stringing of wires, rods, or cables in the streets or alleys or within the limits of any city or town.

History: En. Subd. 43, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.42, R.C.M. 1935; R.C.M. 1947, 11-945.

7-13-4107. Protection of private waste disposal service in municipality. A municipality, as of January 1, 1979, that receives garbage and solid waste disposal services from a private motor carrier authorized by the public service commission to provide such service may not, by ordinance or otherwise, elect to provide exclusive garbage and solid waste service unless the municipality pays the private motor carrier fair market value for his equipment or unless the municipality delays commencing the public service for a period of 5 years from the date of the decision by the municipality to provide the garbage and solid waste services. The private motor carrier shall be given notice of the decision by the municipality to provide exclusive garbage and solid waste services no later than 10 days after the decision has been made by the municipality.

History: En. Sec. 1, Ch. 448, L. 1979.

Part 42

Public Sewer Systems

7-13-4201. Establishment of sewer systems. A sewer system may be established in a city or town, which system may be divided into public, district, and private sewers.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4202. Construction of public sewers. Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and materials, and under such regulations as may be prescribed by the council. There may be constructed such branches and extensions of sewers already constructed or to be constructed as may be considered expedient.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4203. Financing of public sewers. (1) To defray the cost of such public sewers, the city or town council may appropriate moneys therefor from the general or sewer fund or by availing itself of money derived from a bond issue authorized by the constitution and laws of the state.

(2) It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property bordering or abutting upon such public sewer, either at the time of its construction or at any future time, for an amount equal to the estimated cost of such district sewer capable of accommodating such property.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(2).

7-13-4204. Rental charges for use of sewer system — election required. (1) Upon being petitioned by 5% of the qualified electors, the city council shall submit to a vote to the qualified electors, at the annual municipal election or at any special election called for that purpose, the question whether or not the city council may establish and collect rentals for the use of such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals shall be paid:

(a) to provide such sewer fund; and/or

(b) to provide for the retirement of such bonds and/or the payment of the interest on such bonds; and/or

(c) for any purpose herein mentioned.

(2) If a majority of votes is cast in favor of such proposition, then the city or town council may establish and collect rentals for the use of any such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals should be paid and to change such scale of rentals from time to time as may be deemed advisable.

(3) The revenues provided in this section shall be in addition to and not exclusive of other revenues which may be now legally collected for sewer payment.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4205. Determination of rental charge. (1) The total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance, and repair of any such sewer system.

(2) For the purpose of making such rental charges equitable, property benefited thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4206. Procedure to collect rentals. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed or by such procedure as may be prescribed by the city or town council.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(part).

7-13-4207. Special fund for sewer rentals. (1) The funds received from the collection of sewer rentals shall be kept as a separate and distinct fund by the city treasurer, subject only to disbursement by order of the council.

(2) This fund shall be used for:

(a) the payment of the cost of management, maintenance, operation, and repair of the sewage system, including treatment and disposal works;

(b) for the creation of a sinking fund for the retirement of any indebtedness; and

(c) for the payment of interest on any such indebtedness.

(3) Any surplus in such fund may be used for the enlargement or replacement of the same and for the payment of the interest on any debt incurred for the construction of such sewage system, including sewage pumping, treatment, and disposal works, and for retiring such debt but shall not be used for the extension of a sewage system to serve unsewered areas or for any purpose other than one or more of those specified above.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(4).

7-13-4208. Procedure to challenge rates. Any 25 or more electors of a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory. The public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory. The municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

History: En. Sec. 15, Ch. 89, L. 1913; re-en. Sec. 5239, R.C.M. 1921; amd. Sec. 1, Ch. 149, L. 1933; re-en. Sec. 5239, R.C.M. 1935; amd. Sec. 3, Ch. 100, L. 1973; R.C.M. 1947, 11-2216(5).

Part 43

Municipal Sewage and/or Water Systems

7-13-4301. Establishment of sewage and water systems — election required. Any city or town, when authorized to do so by a majority vote of the qualified electors voting on the question, may:

(1) establish, build, construct, reconstruct, and/or extend:

(a) a storm and/or sanitary sewerage system; and/or

(b) a plant or plants for treatment or disposal of sewage therefrom; or

(c) a water supply and/or distribution system; or

(d) any combination of such systems; and

(2) operate and maintain such facilities for public use.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4302. Manner of calling and holding elections. (1) Any election under this part may be called by a resolution of the governing body, which it may adopt without being previously petitioned to do so.

(2) The question of building, constructing, reconstructing, or extending the system, plant, or plants and the question of issuing and selling revenue bonds for such purpose may be submitted as a single proposition or as separate propositions.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4303. Meaning of term qualified electors. In this part, "qualified electors" shall mean registered electors of the municipality.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4304. Authority to charge for services. (1) The governing body of a municipality operating a municipal water or sewer system shall fix and establish, by ordinance or resolution, and collect rates, rentals, and charges for the services, facilities, and benefits directly or indirectly afforded by the system, taking into account services provided and benefits received.

(2) Sewer charges may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The charges may be fixed on the basis of water consumption or any other equitable basis the governing body considers appropriate. The rates for charges may be fixed in advance or otherwise and shall be uniform for like services in all parts of the municipality. If the governing body determines that the sewage treatment or storm water disposal prevents pollution of sources of water supply, the sewer charges may be established as a surcharge on the water bills of water consumers or on any other equitable basis of measuring the use and benefits of the facilities and services.

(3) An original charge for the connecting sewerline between the lot line and the sewer main may be assessed when the connecting sewerline is installed.

(4) The water and sewer rates, charges, or rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered.

History: Ap. p. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; Sec. 11-2219, R.C.M. 1947; Ap. p. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; Sec. 11-2217, R.C.M. 1947; Ap. p. Sec. 1, Ch. 411, L. 1973; Sec. 84-4726.1, R.C.M. 1947; R.C.M. 1947, 11-2217(part), 11-2219(part), 84-4726.1(part); amd. Sec. 25, Ch. 251, L. 1979.

7-13-4305. Consumers required to pay for services. No person, firm, or corporation shall be permitted to use said system unless they pay the full and established rate for said service.

History: En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).

7-13-4306. Effect of failure to pay charges. In the event of nonpayment of charges for either water or sewer service and benefits to any premises, the governing body may direct the supply of water to such premises to be discontinued until such charges are paid.

History: En. Sec. 1, Ch. 149, L. 1943; amd. Sec. 1, Ch. 100, L. 1947; amd. Sec. 1, Ch. 98, L. 1955; amd. Sec. 7, Ch. 158, L. 1971; R.C.M. 1947, 11-2217(part).

7-13-4307. Establishment of amount of charges. The rates and charges established for the services and facilities afforded by this system shall be sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance and for the payment of the sums required to be paid into the sinking fund and for the accumulation of such reserves and the making of such expenditures for depreciation and replacement of said system as shall be determined necessary from time to time by the governing body or as shall have been covenanted in the ordinances and resolutions authorizing the outstanding bonds.

History: En. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; R.C.M. 1947, 11-2219(part).

7-13-4308. Change and readjustment of charges. The governing body shall have the right to change and readjust from time to time the rates and charges so fixed and established, provided the aggregate of such rates and charges shall always be sufficient to meet the requirements mentioned in 7-13-4307.

History: En. Sec. 3, Ch. 149, L. 1943; amd. Sec. 3, Ch. 98, L. 1955; R.C.M. 1947, 11-2219(part).

7-13-4309. Procedure to collect sewer charges. (1) The sewer charges shall be collected by the treasurer.

(2) On or before January 15 of each year, notice shall be given by the city treasurer or town clerk to the owners of all lots or parcels of real estate to which sewer service has been furnished prior to January 1 by the city or town. Said notice shall specify the assessment owing and in arrears at the time of giving such notice. Such notice shall be in writing and shall state the amount of such arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance and that unless the same is paid by July 1 thereafter, the same will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent as above specified. Such notice may be delivered to such owner personally or by letter addressed to such owner at the

post-office address of such owner as recorded in the office of the county assessor.

(3) (a) Except as provided in subsection (3)(b), on March 1, the city treasurer or town clerk shall certify and file with the county assessor a list of all lots or parcels of real estate, giving the legal description thereof, to the owners of which notices of arrearage in payments were given as above specified and which arrearage still remains unpaid and stating the amount of such arrearage, including any penalty and interest. The county assessor shall insert the same as a tax against such lot or parcel of real estate.

(b) In cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall insert such delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent.

History: **En. 84-4726.1 by Sec. 1, Ch. 411, L. 1973; R.C.M. 1947, 84-4726.1(part).**

7-13-4310. Role of public service commission unaffected. Nothing contained in this part shall be construed to change or affect the powers and the duties of the public service commission of Montana prescribed in Title 69, chapters 1, 2, and 3.

History: **En. Sec. 5, Ch. 98, L. 1955; R.C.M. 1947, 11-2220.1.**

7-13-4311. Authorization to furnish water and sewer services to industrial consumers. (1) Subject to the provisions of subsection (2), the city or town council of any city or town within Montana that owns and operates a municipal water system and/or a municipal sewage system to furnish water and/or sewage services to the inhabitants of such city or town as a public utility shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewage system:

(a) to any person, factory, or other industry located within the corporate limits of such city or town; or

(b) to any person, factory, or other industry located outside the corporate limits of such city or town.

(2) (a) The services authorized by subsection (1) shall be furnished at reasonable rates, filed by the city or town council and approved by the public service commission.

(b) Delivery of water and delivery of sewage services by any such city or town to or for the use of any person, factory, or other industry located outside the corporate limits of such city or town shall be made within or at the boundary line of the corporate limits of such city or town or from any existing waterline or sewerline of such city or town located outside of the corporate limits of such city or town, except as hereinafter provided.

History: **En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(1).**

7-13-4312. Authorization to furnish water and sewer services to persons located outside municipality. The city council of any city within Montana that owns and operates a municipal water system and/or a municipal sewer system to furnish water and sewer services to the inhabitants of such city as a public utility shall, in addition to all other powers, have power to furnish water from such water system and sewage services from such sewer system to the inhabitants or to any person, factory, industry, or producer of farm or other products located outside of the corporate limits of such city at reasonable rates filed by the city or town council and approved, when otherwise required by statute, by the public service commission. Such city council is further empowered to make collections for furnishing water and sewer services in the same manner as collections are made within the corporate limits.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(2).

7-13-4313. Illegal use of water or sewer system. Any person, firm, or corporation residing either inside or outside of the corporate limits of a city owning a municipal water system and/or a municipal sewer system which furnishes water or sewer services as a public utility who shall willfully turn on the waterline or sewerline after the same shall have been shut off by or under the direction of the city for nonpayment of water charges or sewer charges or who shall unlawfully take water from such water system or shall unlawfully make use of such sewer system shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(3).

7-13-4314. Annexation as a requirement for receiving service. Any person, firm, or corporation receiving water or sewer service outside of incorporated city limits may be required by the city or town, as a condition to initiate such service, to consent to annexation of the tract of property served by the city or town. The consent to annexation is limited to that tract or parcel or portion of tract or parcel that is clearly and immediately, and not potentially, being serviced by the water or sewer service.

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; re-en. Sec. 5040.1, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961; amd. Sec. 1, Ch. 229, L. 1971; R.C.M. 1947, 11-1001(4).

7-13-4315 through 7-13-4320 reserved.

7-13-4321. Water and sewer revenue bonds authorized. Any municipality may issue and sell negotiable revenue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized to do so by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose. The election shall be noticed in accordance with the provisions of 7-7-4227 and conducted in accordance with the provisions of chapter 7, part 42, governing elections on municipal general obligation bonds.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part); amd. Sec. 45, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the last sentence for "and noticed and conducted in accordance with the provisions of [7-7-4227 through 7-7-4233]".

7-13-4322. Additional bonds for reconstruction and improvement. Any municipality having issued bonds payable from net revenues of its water and sewer systems or combined water and sewer system, whether under authority of 7-13-4321 or otherwise, may issue additional bonds, after authorization by the qualified electors in the manner provided in 7-13-4321, to finance the reconstruction and improvement of such system and the construction of additions thereto and may provide that such additional bonds shall be payable from said net revenues on a parity with the outstanding bonds of such previous issues, subject to any restrictions upon such issuance which may be imposed by the resolutions or ordinances authorizing said outstanding bonds; or the governing body may provide for the issuance of refunding bonds, without an election, to retire such outstanding bonds and may, if desired, combine such refunding issue with the issue authorized by the electors for reconstruction, improvements, and additions or may include the amount required for such refunding in the amount of such additional issue when submitted to the electors.

History: **En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(7).**

7-13-4323. Resolution authorizing bond issue — creation of sinking fund. Prior to the issuance of said bonds, the city council or other governing body of such municipality:

(1) shall adopt an ordinance or resolution authorizing the issuance and sale of said bonds; and

(2) must create a sinking fund for the payment of the bonds and the interest thereon and charges of the fiscal agency for making payment of the bonds and interest thereon.

History: **En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(2).**

7-13-4324. Details related to revenue bonds. (1) All bonds shall mature within 40 years from the date of the bonds and may be registered as to ownership of principal only with the treasurer of said municipality if so directed by the governing body.

(2) No bonds shall be sold for less than par.

(3) Each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory, or constitutional limitation upon the incurring of indebtedness.

History: **En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).**

7-13-4325. Maintenance of separate income accounts and books. After any municipality has issued and sold revenue bonds under this part, it must keep all income and revenues derived from the operation of the system separate and distinct from all other revenues and shall keep books and accounts for such system separate and distinct from all other books and accounts.

History: **En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).**

7-13-4326. Maintenance of sinking fund and investment of certain reserves. (1) The governing body shall maintain a sufficient balance of cash in the sinking fund for the payment of principal and interest currently due on outstanding revenue bonds but may in its discretion, subject to any restrictions contained in the ordinances or resolutions authorizing such bonds, invest money in said sinking fund or other net revenues held in reserve for bond payments, replacements, or depreciation in general obligation bonds of the United States of America or of the municipality itself.

(2) The income from all such investments shall remain part of the sinking fund or reserve from which the investment was purchased, and all such investments shall be collected at maturity or shall be sold when necessary to provide cash for the purposes of said sinking fund and reserve.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4327. Nature of indebtedness arising from revenue bonds. Any bonds and interest thereon shall be a valid claim of the holders thereof only against the sinking fund and the net income and revenues of the system pledged thereto and shall not constitute an indebtedness of the municipality within the meaning of any charter, statutory, or constitutional limitation upon the incurring of indebtedness.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4328. Pledge of income to payment of bonds. (1) At or before the issuance and sale of any such bonds, the governing body shall by resolution or ordinance set aside to such sinking fund and pledge to the payment of the bonds and the interest thereon the net income and revenues of the system, including all additions thereto and replacements and improvements thereof subsequently constructed or acquired, up to an amount sufficient to provide for the payment of the principal and the interest on the bonds as such principal and interest shall become due and payable and to accumulate and maintain reserves securing such payments in such amount as shall be deemed by the governing body to be necessary and expedient.

(2) The net income and revenues mentioned in subsection (1) shall be construed to mean all the gross income from said system less normal, reasonable, and current expenses of operation and maintenance thereof.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(3), (4).

7-13-4329. Bond payments to have priority with respect to net income. The payments mentioned in 7-13-4328 shall constitute a first and prior charge and lien on the entire net income and revenues derived from the operation of said system. The governing body shall have power to establish from time to time the relative priority of the liens of successive issues of bonds upon said net income and revenues, subject to any restrictions contained in the ordinances or resolutions authorizing bonds of prior issues.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(5).

7-13-4330. Convenants with holders of bonds. Any municipality issuing bonds under this part shall have the right to covenant with the holders of the bonds as to:

(1) the purpose to which the proceeds received from the sale of the bonds shall be applied and the use and disposition thereof;

(2) the use and disposition of the income and revenues derived from the operation of the system;

(3) the issuance and sale of additional bonds payable from the income and revenues of the system;

(4) the operation and maintenance of the system;

(5) the insurance to be carried thereon and the disposition of the insurance money;

(6) its books of account and the inspection and audit thereof and its accounting methods;

(7) rates and charges for the services and facilities afforded by the system; and

(8) any other matters pertaining to the manner of handling this system and care and manner of paying the revenues on the bonds and interest.

History: En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).

7-13-4331. Buyback of outstanding revenue bonds. Subject to the provisions of any ordinances or resolutions authorizing the bonds, the governing body may apply net revenues:

(1) to the purchase of outstanding revenue bonds which are not yet prepayable according to their terms, at such price as will yield a net return to the municipality, computed to the earliest redemption date of such bonds; and

(2) for the redemption of any of said bonds as and when the same become prepayable according to their terms.

History: En. Sec. 4, Ch. 149, L. 1943; amd. Sec. 4, Ch. 98, L. 1955; R.C.M. 1947, 11-2220(part).

7-13-4332. Prohibition on obligations giving rise to tax liability. Nothing contained in this part shall be construed to permit the municipality to incur under the provisions thereof any obligation for the payment of which taxes may be levied.

History: En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).

7-13-4333. Registration of bonds. Any bonds issued under this part may be registered with the city treasurer of said municipality.

History: En. Sec. 5, Ch. 149, L. 1943; R.C.M. 1947, 11-2221(part).

7-13-4334 through 7-13-4340 reserved.

7-13-4341. Refunding revenue bonds authorized. (1) Any such municipality, by ordinance or resolution adopted by its governing body and without an election, may issue and sell negotiable revenue bonds in the manner provided in 7-13-4321 through 7-13-4324, 7-13-4328, and 7-13-4329 to refund bonds previously issued for any of the foregoing purposes, whether issued under authority of 7-13-4321 or any other applicable law.

(2) Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any principal or interest due which can be paid from revenues then on hand.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4342. Details relating to refunding bonds. (1) Except as authorized in subsection (2), refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least ⅜ of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvements, and additions. The lien of such new bonds upon the revenues of the system or systems must be junior and subordinate to the lien of the outstanding bonds refunded under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(8).

7-13-4343. Exchange or sale of refunding bonds. (1) Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a price not less than par plus accrued interest.

(2) Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor except in accordance with the terms of such outstanding bond.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(part).

7-13-4344. Establishment of escrow account for proceeds of refunding bonds. (1) In any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company:

(a) which has its principal place of business within or without the state;

(b) which is a member of the federal reserve system; and

(c) which has a combined capital and surplus not less than $1 million.

(2) The proceeds shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient:

(a) to pay, when due, the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption; and

(b) to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date and any premium required for redemption on such date. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the

United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(3) The resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all prepayable bonds in accordance with their terms.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(9).

7-13-4345. Use of funds on hand. (1) Revenues and other funds on hand in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents.

(2) Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in 7-13-4344 to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963; amd. Sec. 13, Ch. 234, L. 1971; R.C.M. 1947, 11-2218(10).

Part 44

Water Supply and Regulation

7-13-4401. Water regulation. The city or town council has power to provide for the cleaning of waters, watercourses, and streams within the city or to alter, straighten, or widen the same and to provide for the draining and filling in of ponds, wells, or shafts on private property when necessary to the public health or public welfare.

History: En. Subd. 15, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.14, R.C.M. 1935; R.C.M. 1947, 11-917.

7-13-4402. Obtaining municipal water supply. The city or town council has power to adopt, enter into, and carry out means for securing a supply of water for the use of a city or town or its inhabitants.

History: En. Subd. 79, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.78, R.C.M. 1935; R.C.M. 1947, 11-981.

7-13-4403. Acquisition of private water supply system. (1) It is provided that whenever a franchise has been granted to or a contract made with any person or persons, corporation, or corporations and such person or persons, corporation, or corporations, in pursuance thereof or otherwise, have established or maintained a system of water supply or have valuable water rights or a supply of water desired by the city or town for supplying the city or town with water, the city or town granting such franchise or entering in such contract or desiring such water supply shall, by the passage of an ordinance, give notice to such person or persons, corporation, or corporations that it desires to purchase the plant and franchise and water supply of such person or persons, corporation, or corporations.

(2) The city or town shall have the right to so purchase the plant or water supply upon such terms as the parties agree.

History: **En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).**

7-13-4404. Use of eminent domain powers to acquire water supply system. (1) In case agreement is not reached pursuant to 7-13-4403, then the city or town shall proceed to acquire the plant or water supply under the laws relating to the taking of private property for public use.

(2) Any city or town acquiring property under the laws relating to the taking of private property for public use shall make payment to the owner or owners of the plant or water supply, of the value thereof legally determined, within 6 months from and after final judgment is entered in the condemnation proceedings.

History: **En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).**

7-13-4405. Acquisition of water rights and other necessary property. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town council shall procure appropriate water rights and title to the same and the necessary real and person property to make said rights and supply available, by purchase, appropriation, location, condemnation, or otherwise.

History: **En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).**

7-13-4406. Control over territory occupied by water supply system — taxation and condemnation powers. Cities and towns shall have jurisdiction and control over the territory occupied by their public works; over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works; and also over the source of streams from which water is taken for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose, the city or town shall be authorized to condemn private property in the manner provided by law and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

History: **En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152,**

L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(4).

CHAPTER 14

TRANSPORTATION

Part 1 — General Provisions Related to Local Government Transportation Services

Section

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Part 48 — Air Transportation

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Part 1

General Provisions Related to Local Government Transportation Services

7-14-101. Acquisition of property for controlled-access facility. The highway authorities of the counties, incorporated cities, and towns, respectively or in cooperation with each other or the state, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

History: **En. Sec. 8-218, Ch. 197, L. 1965; R.C.M. 1947, 32-4018(part).**

7-14-102. Allocation of state funds for public transportation. (1) (a) The department of commerce shall allocate each year one-half of the funds appropriated for the purposes of this section among the cities and urban transportation districts of the state which operate or contract for the operation of general public transportation systems.

(b) (i) A city or urban transportation district is eligible for an allocation based upon the ratio of its local financial support for public transportation to the total local financial support for all general public transportation systems in the state. Local financial support shall be determined by dividing the city's or district's expenditure of local revenues for public transportation operations during the fiscal year by the mill value of the city or urban transportation district. Each applicant city and urban transportation district shall compute its expenditure of local revenues for public transportation operations for a fiscal year immediately following the end of such year and shall apply allocations received against that deficit.

(ii) A city or urban transportation district may not receive more than 50% of any year's expenditure of local revenues for public transportation operations as an allocation under this section.

(2) One-half of the funds appropriated for the purposes of this section shall be paid by the state treasurer to the counties of the state in the manner provided in 15-70-101(1)(a). Money distributed to counties under this section shall be used by the counties for highway or other transportation purposes.

(3) The department of commerce may make rules for the keeping of accounts for and otherwise implementing this section.

History: En. 11-4513 by Sec. 1, Ch. 515, L. 1975; amd. Sec. 1, Ch. 213, L. 1975; R.C.M. 1947, 11-4513; amd. Sec. 1, Ch. 559, L. 1979; amd. Sec. 6, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of community affairs" in (1)(a) and (3).

Transfer of Function: Section 6, Ch. 274, L. 1981, provided in part: "(1) The department of community affairs is abolished.

(2) The following functions of the department of community affairs are transferred to the department of commerce:

(a) allocation of state funds for public transportation in 7-14-102; . . ."

Distribution of Funds in Excess of Those Appropriated: Section 2, Ch. 559, L. 1979, provided: "Nothing in [this act] shall commit the state to distribute funds in excess of those specifically appropriated for this purpose."

Effective Date: Section 3, Ch. 559, L. 1979, provided: "This act is effective on passage and approval." Approved April 12, 1979.

7-14-103. Use of county road equipment in certain municipalities. The board of county commissioners of any county may in its discretion authorize and permit the use of any county highway or road machinery or equipment, when not in use in any rural district, in connection with the construction, repair, and maintenance of streets, avenues, and alleys within any incorporated city or town of population of 4,000 or less located in such county.

History: En. Sec. 1, Ch. 157, L. 1939; R.C.M. 1947, 16-1005.

7-14-104. Costs of discontinuation of trafficway. Whenever a governing body discontinues, abandons, or vacates a street, alley, or road under part 26 or part 41, the costs of such process may be assessed against the petitioning property owner. Such costs may include costs of publication, engineering, and site viewing.

History: En. 11-2806 by Sec. 1, Ch. 72, L. 1977; R.C.M. 1947, 11-2806.

Part 2

Urban Transportation Districts

7-14-201. Purpose. This part authorizes the establishment of urban transportation districts to supply transportation services and facilities to district residents and other persons.

History: En. 11-4501 by Sec. 1, Ch. 355, L. 1975; R.C.M. 1947, 11-4501.

7-14-202. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of transportation of any district created under this part.

(2) "Commissioners" means the board of county commissioners or other governing body of a county.

(3) "District" means any transportation district created under this part.

History: En. 11-4502 by Sec. 2, Ch. 355, L. 1975; R.C.M. 1947, 11-4502.

7-14-203. Petition to create urban transportation district. Proceedings for creation of a transportation district may be initiated by a petition signed by not less than 20% of the registered electors who reside within the proposed district.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 338, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-14-204. Details relating to petition. The petition shall include a map showing the limits of the proposed district and shall be in the form provided in Title 13, chapter 27.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 339, Ch. 571, L. 1979.

7-14-205. Petition to be filed with election administrator — certificate. (1) The complete petition shall be filed with the election administrator.

(2) The election administrator shall, within 30 days thereafter, carefully examine the petition and attach to it a certificate under his official signature and the seal of his office. The certificate shall set forth:

(a) the total number of individuals who are registered electors within the proposed transportation district; and

(b) which and how many of the individuals whose names are on the petitions are qualified to sign the petition.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 340, Ch. 571, L. 1979.

7-14-206. Effect of insufficient number of signatures. If the petition is found to contain less than 20% of the signatures of the registered electors of the transportation district, the petition shall be declared void.

History: En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(part); amd. Sec. 341, Ch. 571, L. 1979.

7-14-207. Presentation of petition to board of county commissioners — hearing required. (1) Provided the petition contains the signatures of 20% of the qualified electors of the proposed transportation district, the county clerk shall present the petition and his certificate to the commissioners at their first meeting held after he has attached his certificate.

(2) The commissioners shall thereupon examine the petition and shall by resolution call for a public hearing on the creation of such district.

History: **En. 11-4503 by Sec. 3, Ch. 355, L. 1975; R.C.M. 1947, 11-4503(2), (3).**

7-14-208. Notice of hearing. (1) A notice of the public hearing shall be published in a newspaper having general circulation within the proposed transportation district once each week for at least 2 weeks, the last publication to be at least 2 weeks prior to the hearing. If there is no newspaper having general circulation within the proposed district, the notice of public hearing shall be posted in at least three public places within the proposed district for 2 weeks prior to the hearing.

(2) The notice shall state the time, date, place, and purpose of the hearing and describe the boundaries of the proposed district.

History: **En. 11-4504 by Sec. 4, Ch. 355, L. 1975; R.C.M. 1947, 11-4504(2).**

7-14-209. Hearing on petition. (1) At the time fixed for the public hearing, the commissioners shall hear all testimony offered in support of and in opposition to any petition and the creation of the district.

(2) The hearings may be adjourned from time to time for the determination of additional information or hearing petitioners or objectors, but no adjournment may exceed 2 weeks after the date originally noticed and published for the hearing.

History: **En. 11-4504 by Sec. 4, Ch. 355, L. 1975; R.C.M. 1947, 11-4504(1).**

7-14-210. Election on question of creating urban transportation district. (1) The commissioners, upon completion of the public hearing, shall proceed by resolution to refer the creation of such district to the persons qualified to vote on such proposition.

(2) The commissioners may designate in their resolution whether a special election shall be held or whether the matter shall be determined at the next general election. If a special election is ordered, the commissioners shall specify in their order the date for the election and the voting places and shall appoint and designate judges and clerks therefor.

History: **En. 11-4505 by Sec. 5, Ch. 355, L. 1975; R.C.M. 1947, 11-4505(part).**

7-14-211. Conduct of election on question of creating district. (1) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(2) At the election, the ballots shall contain the words:

☐ Transportation district — YES

☐ Transportation district — NO

History: **En. 11-4505 by Sec. 5, Ch. 355, L. 1975; R.C.M. 1947, 11-4505(part); amd. Sec. 342, Ch. 571, L. 1979.**

7-14-212. District to be governed by elected transportation board. The district shall be governed by a transportation board. The board shall consist of three members. After expiration of the term of the individuals appointed to the initial board, the board members shall be elected.

History: **En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).**

7-14-213. Selection of initial transportation board. (1) The transportation board shall consist of three members appointed by a selection board composed of the commissioners and an equal number of representatives from the governing bodies of each incorporated city included or partially included in the district.

(2) The appointed members shall serve until the first county general election after their appointment.

History: **En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).**

7-14-214. Election of members of transportation board. (1) Any registered elector in the district may file a petition of candidacy with the election administrator of the county where the district is located. No filing fee shall be required. All candidates shall file a nonpartisan petition for candidacy containing the signatures of not less than 25 registered electors of the district. Except for the number of petition signers required, the petition shall be filed as provided in 13-14-113.

(2) The names of the six candidates receiving the highest number of votes in the primary election shall be placed on the ballots in the county general election.

History: **En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 343, Ch. 571, L. 1979; amd. Sec. 1, Ch. 117, L. 1981.**

Compiler's Comments

1981 Amendment: Added the requirement and the exception relating to the number of petition signers near the end of (1).

7-14-215. Term of office. (1) At the first election for membership on the transportation board, the candidate receiving the highest number of votes in the county general election shall receive a 4-year term on the board. The two candidates receiving the next highest number of votes in the county general election shall receive 2-year terms on the board.

(2) After the initial election, two seats on the board shall be filled at every county general election. The candidate receiving the highest number of votes shall serve a 4-year term and the candidate receiving the next highest number of votes shall serve a 2-year term.

History: **En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).**

7-14-216. Vacancies on transportation board. (1) A vacancy on the board shall be filled by a selection board composed of two county commissioners, two representatives from governing bodies of each municipality included or partially included in the district, and two transportation board members.

(2) A member appointed to fill a vacancy shall serve until the first county general election after his appointment.

History: **En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 1, Ch. 601, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted the present language for "The selection board shall fill all vacancies occurring on the transportation board."

7-14-217. Notice required of opening on board to be filled by appointment. (1) The selection board or the remaining board members shall give public notice of their solicitation of applications for initial membership on the board or for the filling of a board vacancy.

(2) The notice must be published in a newspaper having general circulation in the district, once each week for at least 2 weeks, and, when involving an initial appointment, the last publication must be at least 2 weeks before the appointment. If there is no newspaper having general circulation within the boundaries of the proposed district, the notice of solicitation must be posted in at least three public places within the boundaries of the proposed district for 2 weeks before the appointment.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part); amd. Sec. 2, Ch. 601, L. 1981.

Compiler's Comments

1981 Amendment: In (1), inserted "or the remaining board members", inserted "initial" before "membership", and inserted "or for the filling of a board vacancy"; in (2), inserted "and, when involving an initial appointment" in the first sentence; and made minor changes in grammar and punctuation.

7-14-218. Compensation of transportation board members. The board members shall serve without pay except for necessary transportation expenses.

History: En. 11-4506 by Sec. 6, Ch. 355, L. 1975; R.C.M. 1947, 11-4506(part).

7-14-219. Powers of transportation board. The board shall have all powers necessary and proper to the establishment, operation, improvement, maintenance, and administration of the transportation district.

History: En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(part).

7-14-220. Employment of administrative officer. The board shall employ a qualified administrative officer for the district. The board shall give public notice of its solicitation of applications for a qualified administrative officer.

History: En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(2).

7-14-221. Area of service. The district shall primarily serve the residents within the district boundaries but may authorize service outside the district boundaries where deemed appropriate.

History: En. 11-4507 by Sec. 7, Ch. 355, L. 1975; R.C.M. 1947, 11-4507(part).

7-14-222 through 7-14-230 reserved.

7-14-231. Transportation district budget. The board shall annually present its budget to the commissioners at the regular budget meetings as prescribed by law and therewith certify the amount of money necessary and proper for the ensuing year.

History: En. 11-4508 by Sec. 8, Ch. 355, L. 1975; R.C.M. 1947, 11-4508(part).

7-14-232. Mill levy authorized — limitation. (1) The commissioners shall annually, at the time of levying county taxes, fix and levy a tax in mills upon all property within said transportation district clearly sufficient to raise the amount certified by the board.

(2) The tax so levied for all district purposes other than payment of bonded indebtedness shall not in any year exceed 12 mills on each dollar of taxable valuation of property within said district.

History: **En. 11-4508 by Sec. 8, Ch. 355, L. 1975; R.C.M. 1947, 11-4508(part).**

7-14-233. Collection of tax — role of county treasurer. (1) The procedure for the collection of the tax shall be in accordance with the existing laws of the state of Montana.

(2) The funds collected under the tax levy shall be held by the county treasurer.

(3) The county treasurer shall be, ex officio, the treasurer for the transportation district and shall keep a detailed account of:

(a) all tax money paid into the fund;

(b) all other money from any source received by the district; and

(c) all payments and disbursements from the fund.

History: **En. 11-4509 by Sec. 9, Ch. 355, L. 1975; R.C.M. 1947, 11-4509(part).**

7-14-234. Warrants to be used for payments. Funds shall be paid out on warrants issued by direction of the board and signed by a majority of its membership.

History: **En. 11-4509 by Sec. 9, Ch. 355, L. 1975; R.C.M. 1947, 11-4509(part).**

7-14-235. Transportation district bonds authorized. A transportation district may borrow money by the issuance of general obligation or revenue bonds or a combination thereof to provide funds for the district.

History: **En. 11-4510 by Sec. 10, Ch. 355, L. 1975; R.C.M. 1947, 11-4510(part).**

7-14-236. Limitation on bonded indebtedness. The amount of bonds issued to provide funds for the district and outstanding at any time shall not exceed 28% of the taxable value of taxable property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

History: **En. 11-4510 by Sec. 10, Ch. 355, L. 1975; R.C.M. 1947, 11-4510(part); amd. Sec. 50, Ch. 614, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "shall not exceed 28% of the taxable value of taxable property" for "shall not exceed 5% of taxable property".

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-14-237 through 7-14-240 reserved.

7-14-241. Procedure to enlarge district. (1) The boundaries of any transportation district may be enlarged if 51% of the qualified electors of the area to be added to the existing district sign a petition requesting addition to such district.

(2) However, each addition must be approved by a majority vote of the transportation board.

(3) All property within any addition to the district shall be subject to all existing indebtedness of the district.

History: En. 11-4511 by Sec. 11, Ch. 355, L. 1975; R.C.M. 1947, 11-4511.

7-14-242. Petition for dissolution of district. Any transportation district may be dissolved upon presentation to the county commissioners of a petition signed by at least 51% of the qualified voters of such district.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

7-14-243. Examination of petition — hearing. (1) Upon the filing of such petition, the commissioners shall carefully examine the petition.

(2) (a) If it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the commissioners shall by resolution call for a public hearing on the dissolution of such transportation district.

(b) If such petition is found by the commissioners to be lacking in the number of signatures, the commissioners shall declare the petition void.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

7-14-244. Notice of hearing on question of dissolution of district. (1) A notice of the hearing required by 7-14-243(2)(a) shall be published in a newspaper having general circulation in the transportation district once each week for at least 2 weeks, the last publication to be at least 2 weeks before the hearing. If there is no newspaper having general circulation in the district, the notice of the hearing shall be posted in at least three public places in the district for 2 weeks before the hearing.

(2) The notice shall state the time, date, place, and purpose of the hearing.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(2).

7-14-245. Hearing on question of dissolution of district — decision. (1) If upon such hearing the commissioners find that the district is not indebted beyond funds immediately available to extinguish all of its debts an obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district.

(2) Such order shall be filed of record, and the dissolution shall be effective for all purposes 6 months after the date of filing the order of dissolution, provided that at or before such time, the board of said district certifies to the county commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with proof thereof.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

7-14-246. Distribution of district assets after dissolution. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged, or irrevocably settled shall be evenly divided between the county and any cities within or partially within the dissolved district.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

Part 3

Local Option Motor Fuel Tax

7-14-301. Local option motor fuel excise tax authorized. (1) The people of a county by initiative may impose a motor fuel excise tax, in increments of 1 cent per gallon, not to exceed 2 cents per gallon upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads. The initiative must specify the tax is to be collected by the department of revenue.

(2) Such a motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of such an initiative.

(3) Every distributor shall pay the motor fuel excise tax to the agency specified in the initiative as provided in subsection (1). When the tax is collected by the department of revenue, each distributor shall render a monthly statement to the department of all gasoline distributed during the preceding calendar month in the county in which it is sold to the ultimate consumer and such other information as the department may reasonably require in order to administer the motor fuel excise tax.

(4) The information, recordkeeping, and examination of records provisions of Title 15, chapter 70, apply to this part.

(5) The department of revenue collecting the tax authorized under subsection (1) shall establish procedures to provide a refund to a person who has paid the excise tax but who can substantiate that the motor fuel was purchased for a use other than on public highways, streets, and roads.

(6) In this part, the terms "distributor", "gasoline", "import", "motor vehicle", "person", and "use" have the meanings ascribed to them in 15-70-201.

History: En. Sec. 1, Ch. 621, L. 1979; amd. Sec. 1, Ch. 572, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "in increments of 1 cent per gallon, not to exceed" for "of not more than"; substituted "sold to the ultimate consumer within the county" for "distributed within the county"; inserted "highways" before "streets"; added the last sentence; substituted (2) for "A county imposing the tax authorized under subsection (1) shall provide a means to provide refunds to persons who have paid the tax on motor fuel for uses other than on public streets and roads"; substituted (3) for "The term "gasoline" has the meaning ascribed to it in 15-70-201"; added subsections (4) through (6); and made minor changes in punctuation.

7-14-302. Use of local motor fuel excise tax revenue. (1) A county or municipality receiving revenue from the tax authorized by 7-14-301 shall use the revenue derived only for the construction, reconstruction, maintenance, and repair of public streets and roads.

(2) A county shall contract with the department for reimbursement of the actual costs of collection. One percent of the motor fuel excise tax revenue collected in a county is to be reimbursed to the distributor for the cost of compliance with this part.

History: En. Sec. 2, Ch. 621, L. 1979; amd. Sec. 2, Ch. 572, L. 1981.

Compiler's Comments

1981 Amendment: In (2), substituted the first sentence for "Two percent of the motor fuel tax revenue collected in a county is allocated to the county governing body for use in administering the tax"; inserted "excise" before "tax"; inserted "collected" after "revenue"; substituted "to the distributor for the cost of compliance with this part" for "at the point of collection for use in administering the tax"; and made minor changes in phraseology.

7-14-303. Allocation of revenue and disposition of funds from county-imposed motor fuel tax. (1) Revenue derived from a motor fuel excise tax imposed by a county under 7-14-301 must be apportioned among the county and municipalities in the county:

(a) in the proportion of motor vehicles registered in the county outside of the municipalities to those registered within the municipalities during the preceding year; or

(b) as determined by an interlocal agreement.

(2) All taxes, interest, and penalties collected by the department of revenue under this part shall be promptly transmitted to the state treasurer who shall deposit such funds in an earmarked revenue fund to the credit of the department of highways account. Such funds shall be paid quarterly by the state treasurer directly to the county in which the tax was imposed.

History: En. Sec. 3, Ch. 621, L. 1979; amd. Sec. 3, Ch. 572, L. 1981.

Compiler's Comments

1981 Amendment: In (1), inserted "excise" before "tax"; substituted "apportioned" for "divided"; added subsections (1)(b) and (2); and made minor changes in phraseology and punctuation.

7-14-304. Lien for delinquent tax — interest and penalty — statute of limitations. (1) The lien provisions of 15-70-211 apply to all delinquent motor fuel excise taxes, penalties, and interest due from a distributor under this part. Such a lien has the same force and effect as a lien for delinquent gasoline license tax imposed under Title 15, chapter 70, part 2.

(2) Penalties and interest for any delinquent motor fuel excise tax are the same as provided for the gasoline license tax under Title 15, chapter 70, part 2.

(3) Any action to recover a delinquent motor fuel excise tax must be initiated within 3 years from the due date of the return or the date of filing the return, whichever period expires later. Upon discovery of fraud, an action must be initiated within 3 years of the discovery.

History: En. Sec. 4, Ch. 621, L. 1979; amd. Sec. 4, Ch. 572, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Penalties for violation of this part shall be the same as provided in 15-70-232."

Parts 4 through 20 reserved

Part 21

General Provisions Related to County Roads

7-14-2101. General powers of county relating to roads and bridges. (1) The board of county commissioners, under such limitations and restrictions as are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) levy taxes therefor as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in such part as may be agreed upon between the boards of the counties concerned;

(ii) levy taxes therefor as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) place such a project in the budget and levy taxes therefor as provided by law.

(2) (a) Unless the context requires otherwise, county road means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with this chapter.

(b) Unless the context requires otherwise, bridge includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

History: **(1)En. Subd. 4, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.3, R.C.M. 1935; amd. Sec. 12-101, Ch. 197, L. 1965; Sec. 16-1004, R.C.M. 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 16-1004(part), 32-2203(4), (11).**

7-14-2102. General powers relating to county roads. Each board of county commissioners may in its discretion do whatever may be necessary for the best interest of the county roads and the road districts.

History: **En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(4).**

7-14-2103. Duties of county commissioners concerning county roads. (1) Each board of county commissioners has general supervision over the county roads within the county.

(2) Each board shall survey, view, lay out, record, open, work, and maintain county roads which are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor.

History: **En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(part).**

7-14-2104. Repealed. Sec. 1, Ch. 211, L. 1979.

History: **En. Sec. 1, Ch. 153, L. 1939; R.C.M. 1947, 17-609.**

7-14-2105. Reports to department of highways. (1) Each board of county commissioners shall make reports relating to roads under its supervision which are requested by the department of highways.

(2) The board and the road supervisor of a county and all other officers who may have the care and supervision of the public highways and bridges

shall, upon the written request of the department, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.

History: (1)En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; Sec. 32-2801, R.C.M. 1947; (2)En. Sec. 5-115, Ch. 197, L. 1965; amd. Sec. 107, Ch. 316, L. 1974; Sec. 32-2815, R.C.M. 1947; R.C.M. 1947, 32-2801(5), 32-2815.

7-14-2106. Parking regulations in unincorporated places. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to establish by resolution parking regulations for the purpose of regulating the parking of motor vehicles in unincorporated towns and villages.

History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.1, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1951; R.C.M. 1947, 16-1002(part).

7-14-2107. Acquisition of right-of-way. (1) Each board of county commissioners shall contract, agree for, purchase, or otherwise lawfully acquire right-of-way for county roads over private property. It may institute proceedings under Title 70, chapter 30, paying for such right-of-way from the county road fund.

(2) Each board shall acquire rights-of-way for county roads and discontinue or abandon them only upon proper petition therefor.

(3) By taking or accepting interests in real property for county roads, the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining it.

History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802, R.C.M. 1947; (2), (3)En. Sec. 8-201, Ch. 197, L. 1965; Sec. 32-4001, R.C.M. 1947; R.C.M. 1947, 32-2802(part), 32-4001.

7-14-2108. Recording of instruments related to acquisition of right-of-way. (1) When a right-of-way is voluntarily given or purchased, an instrument in writing conveying the right-of-way and incidents thereto must be signed and acknowledged by the person making it. It must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right-of-way is condemned, a certified copy of the judgment of the court must be made. It must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments shall particularly describe the land.

History: En. Sec. 8-212, Ch. 197, L. 1965; R.C.M. 1947, 32-4012.

7-14-2109. Transfer to state of county responsibility for right-of-way. A board of county commissioners shall transfer its control over and responsibility for a county road when the department of highways notifies it that:

(1) a federal or state highway has been established and definitely located over a county road;

(2) funds are available for immediate construction of the highway;

(3) the highway will be improved and maintained by the department.

History: En. Sec. 8-216, Ch. 197. L. 1965; amd. Sec. 149, Ch. 316, L. 1974; R.C.M. 1947, 32-4016.

7-14-2110. Preparation of plat books. Each board of county commissioners may in its discretion order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable platbooks.

Each board shall have recorded in it with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map of the road, and a record of all proceedings with reference to the road.

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; R.C.M. 1947, 32-2803(1).

7-14-2111. Layout of roads. County roads must be laid out and opened when practicable upon subdivision or section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En. Sec. 5-109, Ch. 197, L. 1965; R.C.M. 1947, 32-2809.

7-14-2112. Width of roads. (1) The width of all county roads, except bridges, alleys, or lanes, must be 60 feet unless a greater or smaller width is ordered by the board of county commissioners on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least 20 feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road established or used as such prior to December 31, 1966.

History: En. Sec. 5-108, Ch. 197, L. 1965; R.C.M. 1947, 32-2808.

7-14-2113 through 7-14-2120 reserved.

7-14-2121. County road districts. (1) The board of county commissioners may in its discretion divide the county into suitable road districts and place each district in the charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district.

(2) If the board does not divide the county into districts, the county itself shall constitute one road district.

History: En. Sec. 5-101, Ch. 197, L. 1965; amd. Sec. 104, Ch. 316, L. 1974; R.C.M. 1947, 32-2801(part).

7-14-2122. County road supervisor. (1) Each board of county commissioners may in its discretion employ a competent road supervisor, who shall serve during the pleasure of the board. In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(2) Under the direction and control of the board, he shall:

(a) prescribe the times and places for all work to be done on the county roads;

(b) report any delinquency or inefficiency of any person employed on any road;

(c) perform other duties which are prescribed by the board.

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; R.C.M. 1947, 32-2803(2), (3).

7-14-2123. Acquisition of machinery and materials. (1) Out of the county road fund, each board of county commissioners may:

(a) purchase and operate grading and other machinery necessary or desirable for the improvement of the county roads;

(b) acquire deposits or quarries of suitable road-building material by purchase, condemnation, or lease.

(2) Each board may also acquire such road-building material by gift.

History: En. Sec. 5-106, Ch. 197, L. 1965; R.C.M. 1947, 32-2806(1), (2).

7-14-2124. Disposition of surplus crushed rock and gravel. (1) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads may be sold by the board of county commissioners at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county.

(2) The proceeds of any such sale shall be paid into the county road fund.

History: En. Sec. 5-106, Ch. 197, L. 1965; R.C.M. 1947, 32-2806(3).

7-14-2125. Inspection of roads and work on roads. (1) The board of county commissioners may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973; R.C.M. 1947, 32-2805(1), (3).

7-14-2126. Compensation for making inspections. The person or persons making the inspections authorized by 7-14-2125 shall receive the sum of $33 per day and actual expenses if he receives no other compensation for that day and is not on an annual salary. The claims shall be audited and allowed in the same manner as other claims against the county.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967; amd. Sec. 1, Ch. 446, L. 1973; R.C.M. 1947, 32-2805(2).

7-14-2127. Temporary limitation or prohibition of traffic. Each board of county commissioners may in its discretion limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part thereof when it is necessary in order to preserve or repair such roads.

History: En. Sec. 5-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2802(4).

7-14-2128. Designation of emergency area near construction project. (1) A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

(2) Notice of the designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for the designation. The board shall post the area or roads affected with adequate signs.

(3) The board shall remove the emergency designation within 30 days after the cessation of the increased traffic.

History: (1)En. Sec. 1, Ch. 118, L. 1963; Sec. 32-317, R.C.M. 1947; redes. 32-2816 by Sec. 2, Ch. 316, L. 1974; Sec. 32-2816, R.C.M. 1947; (2), (3)En. Sec. 2, Ch. 118, L. 1963; Sec. 32-318, R.C.M. 1947; amd. and redes. 32-2817 by Sec. 3, Ch. 316, L. 1974; Sec. 32-2817, R.C.M. 1947; R.C.M. 1947, 32-2816, 32-2817.

7-14-2129. Control of livestock in emergency area. (1) A person who owns or has custody of livestock may not permit the livestock to run upon the emergency area unless the livestock is under herd in transit across the emergency area in the custody of an attendant.

(2) A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector of the department of livestock or a deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector, and the usual inspection fees and mileage shall be paid by the owner of such livestock.

(3) A person who violates subsection (1) is guilty of a misdemeanor and shall be fined not less than $10 or more than $50 for each violation.

History: (1)En. Sec. 3, Ch. 118, L. 1963; Sec. 32-319, R.C.M. 1947; amd. and redes. 32-2818 by Sec. 4, Ch. 316, L. 1974; Sec. 32-2818, R.C.M. 1947; (2)En. Sec. 4, Ch. 118, L. 1963; Sec. 32-320, R.C.M. 1947; amd. and redes. 32-2819 by Sec. 5, Ch. 316, L. 1974; Sec. 32-2819, R.C.M. 1947; (3)En. Sec. 5, Ch. 118, L. 1963; Sec. 32-321, R.C.M. 1947; amd. and redes. 32-2820 by Sec. 6, Ch. 316, L. 1974; Sec. 32-2820, R.C.M. 1947; R.C.M. 1947, 32-2818, 32-2819, 32-2820.

7-14-2130. Control of the movement of livestock on or near county roads. (1) Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Where a county road connects with a state or federal highway which is fenced on both sides, the board of county commissioners may construct and maintain extensions of the fence across the right-of-way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

(3) Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802, R.C.M. 1947; (2)En. Sec. 5-110, Ch. 197, L. 1965; Sec. 32-2810, R.C.M. 1947; (3)En. Sec. 5-111, Ch. 197, L. 1965; Sec. 32-2811, R.C.M. 1947; R.C.M. 1947, 32-2802(part), 32-2810, 32-2811.

7-14-2131. Reseeding of right-of-way. (1) Whenever the natural sod cover on right-of-way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board of county commissioners shall require that such disturbed areas be seeded to an adaptable perennial grass or combination of perennial grasses and legumes. Every effort shall be made to establish a sod cover on the disturbed area.

(2) All seed used shall meet certified standards.

(3) Time and method of seeding, fertilizing practices, and grass species shall be those recommended by the Montana extension service.

History: En. Sec. 5-113, Ch. 197, L. 1965; R.C.M. 1947, 32-2813.

7-14-2132. Control of weeds along roads and highways. (1) The board of weed control and weed seed extermination supervisors shall control noxious weeds on the county roads.

(2) If the department of highways does not control noxious weeds on state and federal highways in any county, the supervisors shall control them. Upon presentation by the supervisors of a verified account of the expenses incurred, the costs of control shall be paid by the department.

History: En. Sec. 5-114, Ch. 197, L. 1965; amd. Sec. 106, Ch. 316, L. 1974; R.C.M. 1947, 32-2814.

7-14-2133. Removal of obstructions on county roads. (1) Whenever any county road becomes obstructed, the board of county commissioners, or the county surveyor if he is in charge, shall remove the obstruction upon being notified thereof.

(2) Nothing in this section shall be construed as holding the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

History: En. Sec. 5-204, Ch. 197, L. 1965; R.C.M. 32-2904(part).

7-14-2134. Removal of highway encroachment. (1) If any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must immediately remove the same.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

History: En. Sec. 11-105, Ch. 197, L. 1965; R.C.M. 1947, 32-4405.

7-14-2135. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or the person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) by leaving it at his place of residence if such person resides in the county; or

(b) by posting it on the encroachment if such person does not reside in the county.

History: En. Sec. 11-106, Ch. 197, L. 1965; R.C.M. 1947, 32-4406.

7-14-2136. Penalty for failure to remove encroachment promptly. If the encroachment is not removed immediately or removal is not diligently conducted, the one who causes, owns, or controls the encroachment is liable to a penalty of $10 for each day the same continues.

History: En. Sec. 11-107, Ch. 197, L. 1965; R.C.M. 1947, 32-4407.

7-14-2137. Legal actions to remove encroachments or recover costs. (1) (a) If the encroachment is denied, the road supervisor shall commence an action in the proper court to abate the same as a nuisance.

(b) If he recovers judgment, he may have his costs and $10 for every day such nuisance remains after notice.

(2) (a) If the encroachment is not denied and is not removed for 5 days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of the land or of the person owning or controlling the encroachment.

(b) He may recover the expense of removal, $10 for each day the encroachment remains after notice, and costs in an action brought for that purpose.

History: En. Sec. 11-108, Ch. 197, L. 1965; R.C.M. 1947, 32-4408.

7-14-2138. Prosecution by county attorney. (1) The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions provided in parts 21 through 28 in the name of the state of Montana.

(2) All penalties shall be paid into the general fund of the county.

History: En. Sec. 11-109, Ch. 197, L. 1965; R.C.M. 1947, 32-4409.

7-14-2139. Procedure to make excavations across highway. (1) (a) Any person contemplating the excavation or construction of any ditch, dike, flume, or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor, or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board.

(2) Any such bridge shall be maintained by the county.

History: En. Sec. 11-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4403(1), (2).

7-14-2140. Prevention of water flow over highway. Any person obtaining a construction permit or any person using the water of a ditch, dike, flume, or canal referred to in 7-14-2139 shall keep the same in repair where such water may flow over or in any way injure a public highway.

History: En. Sec. 11-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4403(3).

7-14-2141. Liability for permitting water to overflow. (1) Every person who excavates or constructs or owns any ditch, dike, flume, or canal or stores, distributes, or uses water for any purpose and permits the water to flow over any public highway to the injury thereof, upon notification by the board of county commissioners, road supervisor, or county surveyor of the district where such overflow occurred, must repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning, or using such ditch or flume who permits an overflow is liable as provided in 45-8-111.

History: En. Sec. 11-104, Ch. 197, L. 1965; R.C.M. 1947, 32-4404.

Part 22

General Provisions Related to Bridges

7-14-2201. Maintenance and control of bridges. (1) Each board of county commissioners shall maintain all public bridges other than those maintained by the department of highways.

(2) The board shall manage and control all bridges referred to in this part. It shall direct the method and time of making repairs, planking, replanking, paving, and repaving.

(3) (a) Whenever any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board, or the county surveyor if he is in charge, shall repair the bridge upon being notified thereof.

(b) Nothing in this subsection shall be construed as holding the board or any member responsible or liable for anything other than willful, intentional neglect or failure to act.

(4) In this part "public bridges" means public bridges located in towns or cities and bridges located on county roads maintained by the county.

History: (1)En. Sec. 5-201, Ch. 197, L. 1965; amd. Sec. 108, Ch. 316, L. 1974; Sec. 32-2901, R.C.M. 1947; (2)En. Sec. 5-205, Ch. 197, L. 1965; Sec. 32-2905, R.C.M. 1947; (3)En. Sec. 5-204, Ch. 197, L. 1965; Sec. 32-2904, R.C.M. 1947; R.C.M. 1947, 32-2901, 32-2904(part), 32-2905(1); (4)En. Sec. 1, Ch. 194, L. 1979.

7-14-2202. Construction and maintenance of bridges crossing county lines. Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L. 1965; R.C.M. 1947, 32-2906.

7-14-2203. Repairs to streambeds, watercourses, and banks. The board of county commissioners may also make repairs to streambeds and watercourses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

History: En. Sec. 5-205, Ch. 197, L. 1965; R.C.M. 1947, 32-2905(2).

7-14-2204. Construction and maintenance of bridges in municipalities. (1) Each board of county commissioners shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half, to be determined by the board, of the cost of planking, replanking, paving, or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

(3) Such bridges and all persons on them shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated.

History: (1), (2)En. Sec. 5-202, Ch. 197, L. 1965; Sec. 32-2902, R.C.M. 1947; (3)En. Sec. 5-205, Ch. 197, L. 1965; Sec. 32-2905, R.C.M. 1947; R.C.M. 1947, 32-2902, 32-2905(3).

7-14-2205. Construction of bridge in municipality — election. (1) Before undertaking the construction in any city or town of any bridge, the cost of which shall exceed $10,000, the board of county commissioners shall submit to the qualified electors of the county at a general or special election the question of whether the bridge shall be constructed and its cost paid by the county.

(2) (a) If the electors vote in favor of construction, the board may issue and sell bonds of the county to the amount authorized for the construction

of the bridge. Bonds shall be issued under such regulations as apply to other bonds of the county.

(b) The bridge shall be constructed using the proceeds of such sale.

(3) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in 7-14-2503.

History: En. Sec. 5-203, Ch. 197, L. 1965; R.C.M. 1947, 32-2903.

7-14-2206. Use of bridges in municipalities by street railway. (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth or more than one-half of the cost of construction of the bridge.

(2) During the time the bridge is used by the railway, the railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth or more than one-half) as is determined by the board.

History: En. Sec. 7-103, Ch. 197, L. 1965; R.C.M. 1947, 32-3603.

Part 23

County Road Superintendent

7-14-2301. County road superintendent — appointment and compensation. (1) In counties without a county surveyor, each board of county commissioners may appoint a county road superintendent. He shall have such duties, powers, and responsibilities as are set forth in this part. After his appointment, the county road superintendent shall serve at the pleasure of and under the direction and control of the board. He shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of his duties.

(2) He shall receive such compensation as is determined by the board.

History: Ap. p. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967; amd. Sec. 105, Ch. 316, L. 1974; Sec. 32-2803, R.C.M. 1947; Ap. p. Sec. 5-301, Ch. 197, L. 1965; Sec. 32-3001, R.C.M. 1947; R.C.M. 1947, 32-2803(4), 32-3001.

7-14-2302. Duties of county road superintendent. (1) Under the direction and supervision of the board of county commissioners, the superintendent shall furnish plans and specifications for highway or bridge work. He shall be chairman of all boards of road viewers.

(2) Under such direction and supervision, he shall also:

(a) take charge of all roads, bridges, and causeways under the jurisdiction of the county;

(b) open all new roads when they are duly established and ordered to be opened by the board;

(c) perform, at the time and in the manner directed by the board, whatever shall be lawfully directed by the board concerning the public highways under the jurisdiction of the county.

History: En. Sec. 5-302, Ch. 197, L. 1965; R.C.M. 1947, 32-3002.

7-14-2303. Equipment used by road superintendent. (1) Upon the requisition of the superintendent, the board of county commissioners shall furnish any necessary equipment, tools, and implements and pay for them out of the county road fund.

(2) The superintendent shall preserve the equipment, tools, and implements and shall not allow them to be used except on public highways. At the expiration of his term of office or upon his removal therefrom, he must turn over all equipment, tools, and implements to his successor or to the board.

History: **En. Sec. 5-305, Ch. 197, L. 1965; R.C.M. 1947, 32-3005.**

7-14-2304. Employment of workers and hiring of equipment. Whenever it is necessary, the superintendent may employ suitable laborers, hire equipment and implements, and contract as to the wages and prices to be paid. Wages and prices shall not exceed rates established by the board of county commissioners for an 8-hour day.

History: **En. Sec. 5-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3006.**

7-14-2305. Construction of drains and ditches to preserve roads. (1) The superintendent may open or construct drains and ditches for making and preserving roads and highways, doing as little injury as may be possible to the adjoining land.

(2) Any person who stops or obstructs any drain or ditch so constructed forfeits the sum of $50, to be recovered by the superintendent or board of county commissioners in a civil action in any court of competent jurisdiction.

(3) Any person aggrieved by the act of the superintendent may make a written complaint to the board, which, if it finds the complaint valid, may pay damages out of the county road fund.

History: **En. Sec. 5-307, Ch. 197, L. 1965; R.C.M. 1947, 32-3007.**

7-14-2306. Records and receipts to be maintained. The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. He shall give to each person performing work or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid therefor.

History: **En. Sec. 5-303, Ch. 197, L. 1965; R.C.M. 1947, 32-3003.**

7-14-2307. Payment of claims upon presentation of superintendent's certificate. Upon the presentation of any certificate issued by the superintendent and verification of it by the holder as in other cases of claims against the county, the board of county commissioners shall have a warrant issued for the amount of the certificate, drawn on the treasury against the county road fund.

History: **En. Sec. 5-304, Ch. 197, L. 1965; R.C.M. 1947, 32-3004(part); amd. Sec. 1, Ch. 253, L. 1979.**

7-14-2308. Superintendent's report. At least once each year and more often if required by the board of county commissioners, the superintendent shall file a report with the board detailing the activities and expenditures of his office and containing any other information the board requires. At the first monthly or quarterly meeting held after filing of a superintendent's report, the board of county commissioners shall examine it.

History: **En. Sec. 5-304, Ch. 197, L. 1965; R.C.M. 1947, 32-3004(part); amd. Sec. 2, Ch. 253, L. 1979.**

Part 24

County Road and Bridge Contracts

7-14-2401. Authority to enter contracts. (1) Subject to the limitations and restrictions provided in the code for the letting of contracts, each board may let by contract the construction, maintenance, and improvement of county roads and the construction, maintenance, or repair of bridges when the amount of work to be done exceeds the sum of $1,000.

(2) As used in this part, unless the context requires otherwise, "board" means the board of county commissioners.

History: (1)En. Sec. 5-102, Ch. 197, L. 1965; Sec. 32-2802; R.C.M 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-2802(2).

7-14-2402. Contracts for county roads. When the estimated cost of opening, establishing, constructing, changing, abandoning, discontinuing, or widening a county road exceeds $1,000, the work may in the discretion of the board be let by contract unless the board shall find that such work may be otherwise done at less cost.

History: En. Sec. 9-201, Ch. 197, L. 1965; R.C.M. 1947, 32-4201(1).

7-14-2403. Advertisement for bids. Before any contract authorized by 7-14-2402 shall be let, the board shall advertise for bids at least once a week for 2 consecutive weeks in a newspaper of general circulation in the county.

History: En. Sec. 9-201, Ch. 197, L. 1965; R.C.M. 1947, 32-4201(2).

7-14-2404. Competitive bids for county road contracts. Each bidder shall comply with the requirements of Title 18, chapter 1, part 2. The contract shall be awarded to the lowest responsible bidder in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4 and the board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-202, Ch. 197, L. 1965; R.C.M. 1947, 32-4202.

7-14-2405. Performance bond to be given by successful bidder. Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-203, Ch. 197, L. 1965; R.C.M. 1947, 32-4203.

7-14-2406. Contracts for bridges. (1) All bids for construction or repair of bridges shall meet these requirements:

(a) If the department of highways has adopted or established a standard plan and specifications, the bids must be submitted thereon.

(b) All bids must be sealed. Each bidder shall meet the requirements of Title 18, chapter 1, part 2.

(2) The board may reject any and all bids. If a contract is awarded, the board shall do so in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-204, Ch. 197, L. 1965; amd. Sec. 151, Ch. 316, L. 1974; R.C.M. 1947, 32-4204.

Part 25

Financial Management of County Roads and Bridges

7-14-2501. General road tax authorized. (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than 15 mills, except in fourth, fifth, sixth, and seventh class counties, which may levy not more than 18 mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders, as the board may direct.

(2) This section shall not apply to incorporated cities and towns which by ordinance provide for the levy of a like tax for road, street, or alley purposes.

(3) All money collected under this section shall belong to the county road fund.

History: En. Sec. 7-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 83, L. 1967; amd. Sec. 1, Ch. 199, L. 1971; R.C.M. 1947, 32-3601; amd. Sec. 1, Ch. 351, L. 1981.

Compiler's Comments

1981 Amendment: Increased the permissive county road levy from 12 to 15 mills and from 15 to 18 mills in fourth, fifth, sixth, and seventh class counties.

7-14-2502. Special bridge tax authorized. (1) Each board may levy a special tax not to exceed 4 mills on all taxable property in the county for the purpose of constructing, maintaining, and repairing free public bridges, which includes those bridges within the municipalities.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the total linear feet of bridges or bridge construction is more than 4,000 and the taxable value of property in that county is $20 million or less, the board may, if necessary, levy 1 mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than 6,000 and the taxable value of property in that county is not less than $20 million or more than $40 million, the board may, if necessary, levy 2 mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over, or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund.

History: En. Sec. 7-102, Ch. 197, L. 1965; amd. Sec. 1, Ch. 57, L. 1973; R.C.M. 1947, 32-3602; amd. Sec. 1, Ch. 283, L. 1979.

7-14-2503. Special municipal bridge tax authorized. Each board may levy a special tax not to exceed 5 mills on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.

History: En. Sec. 7-104, Ch. 197, L. 1965; R.C.M. 1947, 32-3604.

7-14-2504. Additional road and bridge construction tax — election required. (1) Each board may make an additional levy upon the taxable property in the county of 10 mills or less for constructing public highways and bridges.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form, inserting the number of mills to be levied and the name of the county:

"Shall there be an additional levy of .... mills upon the taxable property in the county of ...., state of Montana, for the purpose of constructing public highways and bridges?

☐ YES
☐ NO".

(3) A majority of the votes cast shall be necessary to permit the additional levy, which shall be collected in the same manner as other road taxes.

History: En. Sec. 7-105, Ch. 197, L. 1965; R.C.M. 1947, 32-3605.

7-14-2505. Allocation of proceeds of oil and gas leases and reserved royalty interests to county road fund. Each board of county commissioners may allocate to the county road fund not more than 50% of the proceeds from oil and gas leases entered into and royalty interests reserved under Title 82, chapter 10, part 2.

History: En. Sec. 1, Ch. 105, L. 1979.

7-14-2506 through 7-14-2510 reserved.

7-14-2511. Creation of county motor vehicle fund. When collected by the treasurer of the county in which a motor vehicle is registered, all license and registration fees for which there is no specific provision as to disposition of the fee shall be credited to the county motor vehicle fund.

History: En. Sec. 7-201, Ch. 197, L. 1965; R.C.M. 1947, 32-3701; amd. Sec. 3, Ch. 253, L. 1979.

7-14-2512. City and county road funds. (1) (a) The county treasurer shall segregate from the county motor vehicle fund and designate as the "city road fund" 50% of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city or town.

(b) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the county road fund.

History: (1)(a), (2)En. Sec. 7-202, Ch. 197, L. 1965; amd. Sec. 1, Ch. 89, L. 1967; amd. Sec. 1, Ch. 467, L. 1975; Sec. 32-3702, R.C.M. 1947; (1)(b)En. Sec. 7-203, Ch. 197, L. 1965; amd. Sec. 2, Ch. 467, L. 1975; Sec. 32-3703, R.C.M. 1947; R.C.M. 1947, 32-3702, 32-3703(1).

7-14-2513. Use of county road fund. The county road fund of each county shall be used for the construction, repair, and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

History: En. Sec. 7-206, Ch. 197, L. 1965; R.C.M. 1947, 32-3706.

7-14-2514. Limit on expenditures for road district. (1) The expenditures in any road district for labor and equipment, together with the compensation to be paid to the supervisor, shall not exceed the sum apportioned quarterly by the board of county commissioners to that district. However, if that sum is not sufficient, the board may appropriate any amount from the county road fund necessary for the use of such district.

(2) The full amount of all road taxes collected in remote districts shall be expended annually by the county commissioners on the roads within such districts.

History: En. Sec. 5-112, Ch. 197, L. 1965; R.C.M. 1947, 32-2812.

7-14-2515 through 7-14-2520 reserved.

7-14-2521. Bond financing authorized. Subject to the limitations and restrictions provided in the constitution and code, each board of county commissioners may issue bonds upon the faith and credit of the county for the construction or improvement of county roads, state highways, and bridges.

History: En. Sec. 5-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2802(3).

7-14-2522. County road and bridge bonds authorized. (1) Each board may issue, negotiate, and sell coupon bonds on the credit of the county:

(a) to construct or improve or acquire rights-of-way for public highways or bridges;

(b) to refund, pay, and redeem optional, redeemable, or maturing highway or bridge bonds when there are not sufficient funds available and it is deemed in the best interests of the county to refund the bonds.

(2) The bonds shall be issued as provided in 7-7-2201.

History: En. Sec. 7-301, Ch. 197, L. 1965; R.C.M. 1947, 32-3801(1), (3).

7-14-2523. Term of county road and bridge bonds. (1) Bonds issued under 7-14-2522(1) may not be issued for a longer term than 20 years.

(2) A bond issued under 7-14-2522(1)(b) may not be issued for a term longer than 10 years, except that:

(a) if the unexpired term of the bonds to be refunded is greater than 10 years, the refunding bonds may be issued for the unexpired term; or

(b) if the 10-year term requires an annual tax levy for payment of the refunding bonds which exceeds 10 mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to 10 mills.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974; R.C.M. 1947, 32-3805(1), (2).

7-14-2524. Limitation on amount of bonds issued — excess void. (1) Except as otherwise provided hereafter and in 7-7-2203 and 7-7-2204, no county shall issue bonds which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the taxable value of the property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants except county high school bonds, will exceed 11.25% but will not exceed 22.5% of the taxable value of such property when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, shall not exceed 22.5% of the taxable value of the property within the county as ascertained by the last preceding general assessment.

History: (1), (2)En. Sec. 7-304, Ch. 197, L. 1965; amd. Sec. 15, Ch. 100, L. 1973; amd. Sec. 13, Ch. 391, L. 1973; Sec. 32-3804, R.C.M. 1947; (3)En. Sec. 7-301, Ch. 197, L. 1965; Sec. 32-3801, R.C.M. 1947; R.C.M. 1947, 32-3801(2), 32-3804(part); amd. Sec. 2, Ch. 332, L. 1979; amd. Sec. 4, Ch. 617, L. 1979; amd. Sec. 51, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Increased 9% to 11.25% wherever it appears; and increased 18% to 22.5% wherever it appears.

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval."

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

Effective date: Sec. 3, Ch. 332, L. 1979, provided: "This act is effective on passage and approval." Approved March 27, 1979.

7-14-2525. Refunding agreements and refunding bonds authorized. (1) Whenever the total indebtedness of a county exceeds 22.5% of the taxable value of the property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof;

(b) enter into such agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds.

History: En. Sec. 7-302, Ch. 197, L. 1965; amd. Sec. 14, Ch. 100, L. 1973; R.C.M. 1947, 32-3802; amd. Sec. 5, Ch. 617, L. 1979; amd. Sec. 52, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Increased 18% to 22.5% in (1).

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval."

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-14-2526. Choice of form of bonds. All bonds issued by any county shall be either amortization bonds or serial bonds. Amortization bonds shall be issued in preference to serial bonds.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(1).

7-14-2527. Amortization bonds. (1) The term "amortization bonds" means that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable.

(2) The part payment of principal increases with each following installment in the same amount the interest payment decreases so that the combined amount payable on principal and interest is the same on each interest payment date.

(3) However, the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(2).

7-14-2528. Serial bonds. (1) The term "serial bonds" means a bond issue payable in equal annual installments, one installment consisting of one or more bonds becoming due and payable each year.

(2) The amount to be paid and redeemed each year shall be determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run so that the total amount of principal to be paid each year will be the same.

(3) The amount of installments becoming due and payable the first year or the first and second years may vary from the others to the extent which results from fixing the amounts of each bond of the other installments at $100, $500, or $1,000, as may be determined by the board.

History: En. Sec. 7-306, Ch. 197, L. 1965; R.C.M. 1947, 32-3806(3).

7-14-2529. Payment of interest. Interest shall be payable semiannually.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch 316, L. 1974; R.C.M. 1947, 32-3805(4).

7-14-2530. Redemption of bonds authorized. (1) All bonds issued for a term longer than 5 years shall be redeemable, at the option of the county, 5 years after the date of issue and on any payment due date thereafter before maturity.

(2) This statement shall appear on the face of each bond.

History: En. Sec. 7-305, Ch. 197, L. 1965; amd. Sec. 30, Ch. 234, L. 1971; amd. Sec. 125, Ch. 316, L. 1974; R.C.M. 1947, 32-3805(3).

7-14-2531. Definition of term single purpose. (1) It shall be deemed a single purpose to:

(a) acquire a right-of-way for and construct a public highway, including any bridge or bridges thereon;

(b) contribute to the cost of a federal-aid bridge;

(c) contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes.

(3) Nothing contained in this section shall be construed as amending or repealing 7-16-2201 through 7-16-2205.

History: En. Sec. 7-303, Ch. 197, L. 1965; R.C.M. 1947, 32-3803.

Part 26

Establishment, Alteration, and Abandonment of County Roads

7-14-2601. Petition to establish, alter, or abandon a county road. (1) Any 10, or a majority, of the freeholders of a road district taxable therein for road purposes may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district.

(2) When the road petitioned for is on the dividing line between two counties, the same procedure must be followed except that a copy of the petition must be presented to each board. The two boards shall act jointly.

(3) As used in this part, unless the context requires otherwise:

(a) "board" means the board of county commissioners;

(b) "abandonment" means cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again and is sometimes called "vacation".

History: (1), (2)En. Sec. 8-202, Ch. 197, L. 1965; Sec. 32-4002, R.C.M. 1947; (3)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-4002(part).

7-14-2602. Contents of petition. The petition must set forth:

(1) the particular road or roads to be opened, established, constructed, changed, abandoned, or discontinued;

(2) the general route thereof;

(3) the lands and owners affected;

(4) whether the owners who can be found consent thereto;

(5) where consent is not given, the probable cost of the right-of-way;

(6) the necessity for and advantage of the petitioned action.

History: En. Sec. 8-203, Ch. 197, L. 1965; R.C.M. 1947, 32-4003.

7-14-2603. Investigation of request concerning road — decision. (1) At its next regular or special meeting or in any case at a date within 30 days after filing of any petition, the board shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

(2) No more than one member of the board and the county surveyor shall make the investigation.

(3) After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes.

History: En. Sec. 8-204, Ch. 197, L. 1965; R.C.M. 1947, 32-4004(1), (2).

7-14-2604. Notice of decision on petition. Within 10 days thereafter, the board shall cause notice of its decision to be sent by certified mail to all owners of land abutting on the road petitioned for. The owners shall be those listed on the last county assessment roll.

History: En. Sec. 8-204, Ch. 197, L. 1965; R.C.M. 1947, 32-4004(3).

7-14-2605. Opening of county road. If the petition is for the opening of a county road and the board grants the prayer ordering the road opened, it shall proceed at once to have it opened to the public and declare it to be a county road.

History: En. Sec. 8-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4005(part).

7-14-2606. Survey of road. (1) The board may order the county surveyor, or some other competent surveyor if the county surveyor is incompetent, to survey and plat the road. He shall file his field notes with the county clerk and recorder.

(2) The surveyor shall receive $7 per day and actual traveling expenses.

History: En. Sec. 8-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4005(part).

7-14-2607. Damages resulting from establishment or alteration of road. (1) Whenever the board makes an order establishing or changing any road, it must find the amount of damages sustained by each owner or claimant of lands or improvements thereon affected by the road. Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded.

(2) Damages shall be paid to the owner or claimant, if known, upon his showing or establishing his right or title to the lands or improvements and furnishing proper deeds and releases.

History: En. Sec. 8-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4006(1), (2).

7-14-2608. Effect of acceptance or rejection of award of damages. (1) If all awards are accepted, the board shall declare the road a county road and open it.

(2) (a) If any award of damages provided for in 7-14-2607 is not accepted within 20 days after the date of the award, it shall be deemed rejected by the owner.

(b) The board shall by order direct that proceedings to procure the right-of-way be instituted under Title 70, chapter 30 by the county attorney against all nonaccepting landowners.

(c) In such proceedings it shall be made to appear that the board shall have declared by resolution that the right-of-way was necessary and desirable.

History: (1)En. Sec. 8-206, Ch. 197, L. 1965; Sec. 32-4006, R.C.M. 1947; (2)En. Sec. 8-207, Ch. 197, L. 1965; Sec. 32-4007, R.C.M. 1947; R.C.M. 1947, 32-4006(3), 32-4007(1), (3).

7-14-2609. Effect of failure to give notice. The proceedings provided for in 7-14-2608 shall in no way be affected or invalidated by the failure of the board to give any notice or do any act provided for in this part. Failure to give any such notice shall not be considered by any court as a defense in any proceedings for procuring right-of-way.

History: En. Sec. 8-207, Ch. 197, L. 1965; R.C.M. 1947, 32-4007(2).

7-14-2610. Payment of damages and expenses. All awards of damages estimated by the board or made by the proper court and all expenses, including those of the members of the board and their per diem authorized by 7-4-2107 and 7-4-2108, shall be paid out of the county road fund on the order of the board.

History: En. Sec. 8-208, Ch. 197, L. 1965; R.C.M. 1947, 32-4008.

7-14-2611. Alteration of road to follow subdivision or section lines. (1) A majority of the freeholders or owners residing on any county road or portion thereof may petition the board in writing to so change the road or portion as to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in 7-14-2603. After investigation, the board may order the making of the change if it can be done without material damage, injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear all or such portion of the cost and expense of making it as the board may order.

History: En. Sec. 8-209, Ch. 197, L. 1965; R.C.M. 1947, 32-4009.

7-14-2612. Crossing of railroad, canal, or ditch by county road — costs. (1) Whenever any county road is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must at their expense so prepare the railroad, canal, or ditch that the road may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-213, Ch. 197, L. 1965; R.C.M. 1947, 32-4013.

7-14-2613. Notice to district supervisor of opening or alteration of county road. When a county road is to be opened, established, constructed, changed, abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish him with a certified copy of the order of the board.

History: En. Sec. 8-210, Ch. 197, L. 1965; R.C.M. 1947, 32-4010.

7-14-2614. Record of road opening or alteration to be maintained. When a county road is opened or changed, the findings of the board, the plat field notes, and the report of the surveyor shall be recorded in the office of the county clerk in a book kept for that purpose.

History: En. Sec. 8-211, Ch. 197, L. 1965; R.C.M. 1947, 32-4011.

7-14-2615. Abandonment or vacation of county roads. (1) All county roads once established must continue to be county roads until abandoned or vacated by:

(a) operation of law;

(b) judgment of a court of competent jurisdiction; or

(c) the order of the board.

(2) No order to abandon any county road shall be valid unless preceded by notice and public hearing.

History: En. Sec. 8-214, Ch. 197, L. 1965; R.C.M. 1947, 32-4014.

7-14-2616. Procedure to discontinue street. (1) The county commissioners may discontinue a street or alley or any part thereof in an unincorporated town or townsite upon the petition in writing of all owners of lots on the street or alley if it can be done without detriment to the public interest.

(2) Where the street or alley is to be closed for school purposes, a petition signed by 75% of the lot owners on the whole street or alley to be closed will be required.

(3) Before acting upon such petition, a notice must be published or posted in three public places, stating when such petition will be acted on and what street or alley or part thereof is asked to be vacated. Such notice must be published in a newspaper or posted at least 1 week before the petition is acted on.

History: (1), (2)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; Sec. 11-2801, R.C.M. 1947; (3)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R.C.M. 1921; re-en. Sec. 5307, R.C.M. 1935; Sec. 11-2802, R.C.M. 1947; R.C.M. 1947, 11-2801(part), 11-2802.

7-14-2617. Discontinuance of street not to affect utility easements. The vacation authorized by 7-14-2616 shall not affect the right of any public utility to continue to maintain its plant and equipment in any such street or alley.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; R.C.M. 1947, 11-2801(part).

7-14-2618 through 7-14-2620 reserved.

7-14-2621. Establishment and alteration of stock lanes. (1) A stock lane is a county road established and maintained for the driving and travel of livestock. It shall be not less than 60 feet wide. The width shall be determined by the board in the order creating it.

(2) Upon presentation of a proper petition, each board may establish, alter, or vacate stock lanes when it deems it expedient and necessary for the

convenience of the public and for the convenience of travel on roads now established. Any lane may adjoin and parallel a county road and shall be described in the petition for creation and in the order of the board creating it.

(3) The provisions of this part and the general laws relating to establishing, altering, and vacating county roads, including the exercise of the right of eminent domain, shall apply to stock lanes. References in all petitions, orders, and proceedings shall be to stock lanes in order to differentiate them from other highways.

History: En. Sec. 8-215, Ch. 197, L. 1965; R.C.M. 1947, 32-4015.

Part 27

Local Improvement Districts

7-14-2701. Development of county roads. (1) Upon proper petition, as provided for in 7-14-2702, the board shall cause county roads to be laid out, opened, constructed, and improved.

(2) As used in this part, unless the context requires otherwise, "board" means the board of county commissioners.

History: (1)En. Sec. 5-401, Ch. 197, L. 1965; Sec. 32-3101, R.C.M. 1947; (2)En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; Sec. 32-2203, R.C.M. 1947; R.C.M. 1947, 32-2203(part), 32-3101(1).

7-14-2702. Petition for opening or improving road. (1) A petition for laying out, opening, constructing, or improving a county road may be presented to the board by the owners of two-thirds of the lineal feet of land fronting on the proposed or existing road or by two-thirds of the residents of the proposed district. If any land is in the name of a deceased person or a person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian is equivalent to the signature of the owner.

(2) The petition must set forth:

(a) that the petitioners are qualified to sign the petition and that they desire the petitioned action;

(b) the kind and nature of the improvement desired;

(c) the mode of payment of the assessments to be levied for defraying the cost thereof, whether immediate payment or by payment in installments;

(d) the portion of the costs which the district, if formed, will assume and pay.

History: En. Secs. 5-402, 5-418, Ch. 197, L. 1965; R.C.M. 1947, 32-3102(part), 32-3118(part); amd. Sec. 4, Ch. 253, L. 1979.

7-14-2703. Proportion of costs to be borne by local improvement district. The portion of the costs which the district will assume and pay must not be less than 35% of the costs and may be as much as 75% thereof.

History: En. Sec. 5-402, Ch. 197, L. 1965; R.C.M. 1947, 32-3102(part).

7-14-2704. Resolution of public interest. (1) Upon receipt of the petition, the board shall pass a resolution that the public interest demands the laying out, opening, constructing, or improving of the road or part thereof described in the resolution.

(2) The description shall not include any portion of any road within the boundaries of any city or incorporated town.

History: **En. Sec. 5-403, Ch. 197, L. 1965; R.C.M. 1947, 32-3103.**

7-14-2705. Meeting between county road superintendent, residents, and owners of land. (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or his deputy, all owners upon whose lands special assessments will be levied, and all residents within the proposed district.

(2) All owners of land fronting on the road or land within 2 miles on either side of it upon which special assessments will be levied and all residents within the proposed district may meet with the superintendent or his duly appointed deputy.

History: **En. Secs. 5-404, 5-405, Ch. 197, L. 1965; R.C.M. 1947, 32-3104(1), 32-3105(1); amd. Sec. 5, Ch. 253, L. 1979.**

7-14-2706. Notice of meeting. (1) The county clerk shall immediately notify the county road superintendent of the meeting and shall cause a notice thereof to be printed in the newspaper published nearest to the vicinity of the road. The notice shall be published for 3 consecutive weeks prior to the time of the meeting.

(2) The notice shall state the time and place of the meeting and in general terms the kind of construction or improvement sought and the place of beginning, intermediate points, and termination.

History: **En. Sec. 5-404, Ch. 197, L. 1965; R.C.M. 1947, 32-3104(2), (3).**

7-14-2707. Meeting procedure — election of committee of supervisors. (1) The superintendent or his deputy, or in their absence one of the landowners or residents present, shall preside. Those present shall elect three as a committee of supervisors; at least one of them shall be a petitioner.

(2) A majority of the owners and residents present and voting shall be sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local improvement district or residents within the proposed district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors. The superintendent or his deputy may administer the oath, or it may be administered by anyone so authorized by law.

History: **En. Sec. 5-405, Ch. 197, L. 1965; R.C.M. 1947, 32-3105(2) thru (4); amd. Sec. 6, Ch. 253, L. 1979.**

7-14-2708. Investigation of proposed road — obtaining releases for damages. The committee and the surveyor or his deputy shall:

(1) immediately view, examine, and survey the road petitioned for;

(2) examine and determine the lands which will be specially benefited by the road and which should be included within the district that is to be assessed;

(3) ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road; and

(a) obtain, if possible without cost, the release in writing of each person of his claim for such damage or injury; or

(b) arrange, when necessary, for a release to be given for such amount as may be fair and reasonable.

History: **En. Sec. 5-406, Ch. 197, L. 1965; R.C.M. 1947, 32-3106(1).**

7-14-2709. Preparation and presentation of plans, estimates, and report. (1) The road superintendent shall without delay prepare plans and specifications and cost estimates. He shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands shall be that which appears on the last annual assessment roll of the county for the levying of general taxes.

(2) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, he shall make a detailed report. The report shall state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.

History: **(1)En. Sec. 5-406, Ch. 197, L. 1965; Sec. 32-3106, R.C.M. 1947; (2)En. Sec. 5-407, Ch. 197, L. 1965; amd. Sec. 41, Ch. 566, L. 1977; Sec. 32-3107, R.C.M. 1947; R.C.M. 1947, 32-3106(2), 32-3107(1).**

7-14-2710. Creation of local improvement district. (1) If the whole amount of damages, costs, and expenses shall not exceed 135% of the total taxable value of the parcels of land in the district as determined from the last annual assessment roll of the county, the board shall make and enter upon the report an order that the road be made.

(2) That order shall create the local improvement district, to be known and designated as "local improvement district No. .... in ..... County, Montana".

(3) Copies of the report shall be kept in the offices of the board and road superintendent.

History: **En. Sec. 5-407, Ch. 197, L. 1965; amd. Sec. 41, Ch. 566, L. 1977; R.C.M. 1947, 32-3107(2), (3).**

7-14-2711. Division of local improvement district into parts. (1) The boundaries of assessment districts within a local improvement district are as follows:

(a) The lands extending from the center of the road one-half mile on each side thereof (measuring 1 mile in width) constitute Part One of the district.

(b) The lands embraced within an area 1 mile wide on each side of Part One constitute Part Two of the district.

(c) The lands embraced within an area 1 mile wide on either side of Part Two constitute Part Three of the district.

(2) Each of the parts extends the full length of the proposed road and 1 mile beyond the terminus unless the committee otherwise provides.

History: **En. Sec. 5-410, Ch. 197, L. 1965; R.C.M. 1947, 32-3110; amd. Sec. 7, Ch. 253, L. 1979.**

7-14-2712. Inspector of works — compensation. (1) The committee and road superintendent together shall appoint some suitable and competent person other than they to act as an inspector of the work. He shall be upon the work at all times during its progress and inspect the performance thereof. He shall report to and be under the supervision of the superintendent.

(2) He shall be paid for his services as inspector at the rate of $5 per day for the time he is actually engaged thereon.

History: **En. Sec. 5-413, Ch. 197, L. 1965; R.C.M. 1947, 32-3113(1), (2).**

7-14-2713. Compensation of committee of supervisors. Each supervisor shall be paid the sum of $3 per day for the time the committee is actually engaged in meeting and acting with the superintendent and in transacting the business of the district. No mileage or other expense money shall be paid.

History: **En. Sec. 5-413, Ch. 197, L. 1965; R.C.M. 1947, 32-3113(3).**

7-14-2714. County authorized to carry out construction or improvement project. (1) Roads in districts may be constructed and improved in the first instance at the entire expense of the county, and the county may, as far as practicable, take the place of a private contractor.

(2) If bids for construction and improvement are rejected by the committee, the district may contract with the board to construct or improve the road.

(3) When the county has paid for construction and improvements, it shall be recompensed by the district in accordance with their agreement. If bonds were issued under the installment plan, they shall become the property of the county.

(4) The county shall have the same lien as if the contract had been let to a private contractor.

History: **En. Sec. 5-414, Ch. 197, L. 1965; R.C.M. 1947, 32-3114.**

7-14-2715. Work contracts with local improvement districts. (1) After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall advertise for bids. The advertisement shall state generally the work to be done and shall refer to the plans and specifications. It shall also fix the time for opening bids in the office of the board. Each bidder shall meet the requirements of Title 18, chapter 1, part 2.

(2) At that time, the committee shall open all bids. It may reject all of them and readvertise for bids. No contract shall be awarded at a greater sum than the estimate of cost provided for in this part.

History: **En. Sec. 9-205, Ch. 197, L. 1965; R.C.M. 1947, 32-4205.**

7-14-2716. Award of contract by local improvement district. (1) If the committee awards a contract, it shall do so in accordance with the requirements of 18-1-102, 18-1-112, and Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Partial payments may be provided for in the contract and paid when certified by the county surveyor and committee.

History: **En. Sec. 9-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4206(1), (3).**

7-14-2717. Performance bond to be given by successful bidder. Before entering upon performance of the contract, the contractor shall comply with the requirements of Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the committee, a contract shall not be completed until the committee, while formally convened, affirmatively accepts all of the work thereunder.

History: **En. Sec. 9-206, Ch. 197, L. 1965; R.C.M. 1947, 32-4206(2).**

7-14-2718. Local improvement district contracts to be executed by board of county commissioners. The contract shall be executed in the name and on behalf of the county by the board and attested with the county seal for the use and benefit of the local improvement district. The county shall not be subject to any claim or liability in an amount greater than that agreed upon with the district in the order fixing the amount chargeable to the county.

History: **En. Sec. 9-207, Ch. 197, L. 1965; R.C.M. 1947, 32-4207.**

7-14-2719. Procedure for payment of claims. (1) The committee shall approve and certify all claims and accounts for services and every kind of expense payable from funds of the district.

(2) The county auditor, or the county clerk in any county which has no auditor, shall then audit all such claims and accounts. Thereafter he shall issue to the treasurer an order in favor of the person to whom the claim or account is payable to pay it.

(3) Upon presentation of the order by the person to whom it was issued or his assignee, the treasurer shall pay it from the funds of the district.

History: **En. Sec. 5-429, Ch. 197, L. 1965; R.C.M. 1947, 32-3129.**

7-14-2720. Payments while work in progress. (1) The surveyor with the approval of the committee, shall make estimates of the proportion of the work completed. After auditing, the estimates may be paid by the treasurer, to an amount not exceeding 80%, during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order only from such assessments as shall have been collected prior to the issue of the bonds and from the proceeds of the sales of the bonds after issue.

(3) If the board has ordered that the contractor shall receive bonds in payment, the order for payment shall call for bonds instead of money. The treasurer shall deliver the bonds, dating them the day he delivers them to the contractor, and interest shall run therefrom.

History: **En. Sec. 5-430, Ch. 197, L. 1965; R.C.M. 1947, 32-3130(1) thru (3).**

7-14-2721. Disposition of excess funds after full payment for road. (1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury which belongs to the district shall be refunded on demand. A rebate therefrom shall be made on demand to any person who shall not have paid his assessment in full.

(2) Demand shall be made within 2 years from the date upon which the assessment became due.

(3) Any such money remaining in the county treasury after the expiration of 2 years for which no demand has been made, shall go into the general fund.

History: En. Sec. 5-431, Ch. 197, L. 1965; R.C.M. 1947, 32-3131.

7-14-2722 through 7-14-2730 reserved.

7-14-2731. Assessment and lien upon lands benefited by road. (1) The board shall levy and cause to be collected an assessment upon all parcels of land specifically benefited by the laying out, opening, construction, or improvement, for paying the costs thereof.

(2) The assessment shall be a first lien upon the liable land, prior and superior to all other liens and encumbrances.

History: En. Sec. 5-401, Ch. 197, L. 1965; R.C.M. 1947, 32-3101(2), (3).

7-14-2732. Payment of assessments — bond issue. (1) The board shall provide for the payment of assessments either on the immediate payment plan or by installments.

(2) The board shall issue local improvement district bonds and coupons for each installment.

History: En. Sec. 5-401, Ch. 197, L. 1965; R.C.M. 1947, 32-3101(4), (5).

7-14-2733. Sharing of road costs with county. (1) The board may enter an agreement to share costs with the district when the petition presented states the proportion which the district will pay. After such an agreement has been made specifying the amount to be paid by the district and the amount to be paid from county funds, the board shall make an order to that effect on the records of its proceedings.

(2) The board shall order paid from county funds the share of the county for construction or improvement of the road. However, payment shall not exceed 65% of the cost. This amount shall be a proper charge against the county and shall be paid by the treasurer upon warrants, duly drawn, as ordered by the board.

History: (1)En. Sec. 5-408, Ch. 197, L. 1965; Sec. 32-3108, R.C.M. 1947; (2)En. Sec. 5-409, Ch. 197, L. 1965; Sec. 32-3109, R.C.M. 1947; R.C.M. 1947, 32-3108, 32-3109.

7-14-2734. Assessments to be allocated between parts of district. (1) Each separate parcel of land in Part One shall be assessed for its proportion of 45% of the whole cost payable by the district.

(2) Each separate parcel of land in Part Two shall be assessed for its proportion of 35% of the cost.

(3) Each separate parcel of land in Part Three shall be assessed for its proportion of 20% of the cost.

History: En. Sec. 5-411, Ch. 197, L. 1965; R.C.M. 1947, 32-3111(1) thru (3).

7-14-2735. Lien arising from assessments. (1) All of the lands in each part shall be subject to a lien for all of the assessments of that part until they have been paid.

(2) The assessment so made shall be a first lien on the land described in the assessment roll.

History: (1)En. Sec. 5-411, Ch. 197, L. 1965; Sec. 32-3111, R.C.M. 1947; (2)En. Sec. 5-417, Ch. 197, L. 1954; Sec. 32-3117, R.C.M. 1947; R.C.M. 1947, 32-3111(4), 32-3117(3).

7-14-2736. Determination of assessment. The assessments upon the parcels of land in each part shall be made ratably according to the front-foot plan as follows:

(1) The unit used to determine the proportion of assessment shall be 1 foot of longitude measured along the road constituting the center of the district and extending latitudinally across the part.

(2) Because units in each part may not be equal, assessment rates for each part shall be determined for 880 square feet of surface.

History: **En. Sec. 5-412, Ch. 197, L. 1965; R.C.M. 1947, 32-3112(1).**

7-14-2737. Adjustment of assessment rates due to unequal areas in parts. If the areas of the parts are not equal, the rates fixed for parts one, two, and three shall be related to each other as are the numbers 45, 35, and 20, respectively.

History: **En. Sec. 5-412, Ch. 197, L. 1965; R.C.M. 1947, 32-3112(2).**

7-14-2738. Preparation of assessment roll. (1) When the order for improvement and construction has been made by the board, the committee and the county assessor shall apportion the estimated cost and expenses to the land in the district.

(2) Within 30 days before the letting of the contract, the assessor shall report to and file with the board and the treasurer an assessment roll in duplicate. It shall contain the description of each parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known.

History: **En. Sec. 5-415, Ch. 197, L. 1965; R.C.M. 1947, 32-3115(part).**

7-14-2739. Notice of preparation of assessment roll. As soon as the assessment roll is reported and filed, the board shall publish notice for 3 consecutive weeks in the newspapers in which notice of invitations for bids for the contract was published. The notice shall notify all persons interested that the assessment roll has been filed and require them to appear at the office of the board at the county seat at a time not less than 15 days from the date of the last publication of the notice to make objections.

History: **En. Sec. 5-416, Ch. 197, L. 1965; R.C.M. 1947, 32-3116(1).**

7-14-2740. Hearing on assessment roll. At the time fixed, the board and the assessor shall meet. If no objections have been filed, the board shall make an order confirming the assessment roll. If written objections, properly verified, have been filed, the board shall hear the objections, receiving any testimony from any party involved.

History: **En. Sec. 5-416, Ch. 197, L. 1965; R.C.M. 1947, 32-3116(2).**

7-14-2741. Effect of error in name of owner. In no case shall a mistake in the name of the owner be fatal to the assessment when the description of the land is correct.

History: **En. Sec. 5-415, Ch. 197, L. 1965; R.C.M. 1947, 32-3115(part).**

7-14-2742. Correction of errors — approval of assessment roll. (1) After the hearing, the board shall make such corrections as appear just to apportion the assessment to the benefit to be received.

(2) It shall then make and enter an order approving and certifying the assessment roll.

History: **En. Sec. 5-417, Ch. 197, L. 1954; R.C.M. 1947, 32-3117(1).**

7-14-2743. Levy of assessments. With the aid of the assessor, the board shall levy and assess the amounts on the assessment roll against the parcels of land or parts thereof.

History: **En. Sec. 5-417, Ch. 197, L. 1954; R.C.M. 1947, 32-3117(2).**

7-14-2744. Mode of payment of assessment — immediate payment. (1) If immediate payment is chosen, the board shall deliver the assessment roll to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in his office and immediately deliver the other to the treasurer.

(2) The treasurer shall publish a notice for 2 consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(3) Failure to mail notice shall not be fatal to the assessment when it has been published.

(4) The notice shall state the following:

(a) The assessment roll has been certified to the treasurer for collection.

(b) Unless payment is made within 30 days from the date of the notice, the payment will become delinquent and shall bear interest at the rate of 10% per annum.

(c) If the assessment is not paid before it becomes delinquent, a penalty of 5% shall be added, as well as the interest on the annual tax roll for the current year.

(d) The interest and penalty shall be collected together with such additional charges as are authorized to be charged and collected on other delinquent taxes.

(e) The land assessed shall be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

History: **(1) thru (3)En. Sec. 5-419, Ch. 197, L. 1965; Sec. 32-3119, R.C.M. 1947; (4)En. Sec. 5-420, Ch. 197, L. 1965; Sec. 32-3120, R.C.M. 1947; R.C.M. 1947, 32-3119, 32-3120.**

7-14-2745. *(Temporary)* **Mode of payment of assessment — installment payments.** (1) Installment payments shall be made in six equal portions, in 1, 2, 3, 4, 5, and 6 years.

(2) Payments shall be in the form of bonds which shall draw interest, not to exceed the limitations of 17-5-102, per annum from the date they are issued until they are paid.

(3) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(4) The board and the assessor shall, at the time of levying the assessment and in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate fixed by the board of county commissioners in accordance with law. The order shall specify the number of

installments which shall be equal to the number of years for which the bonds may run.

(5) Each year thereafter, the treasurer shall collect one of the installments, together with the interest due thereon and the interest due on the installments thereafter to become due.

(6) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments.

7-14-2745. *(Revived July 1, 1983)* **Mode of payment of assessment — installment payments.** (1) Installment payments shall be made in six equal portions, in 1, 2, 3, 4, 5, and 6 years.

(2) Payments shall be in the form of bonds which shall draw 6% interest per annum from the date they are issued until they are paid.

(3) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(4) The board and the assessor shall, at the time of levying the assessment and in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate fixed by the board of county commissioners in accordance with law. The order shall specify the number of installments which shall be equal to the number of years for which the bonds may run.

(5) Each year thereafter, the treasurer shall collect one of the installments, together with the interest due thereon and the interest due on the installments thereafter to become due.

(6) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments.

History: **(1), (2)En. Sec. 5-418, Ch. 197, L. 1965; Sec. 32-3118, R.C.M. 1947; (3) thru (6)En. Sec. 5-421, Ch. 197, L. 1965; amd. Sec. 27, Ch. 234, L. 1971; Sec. 32-3121, R.C.M. 1947; R.C.M. 1947, 32-3118(part), 32-3121; amd. Sec. 6, Ch. 500, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "interest, not to exceed the limitations of 17-5-102" for "6% interest" in (2).

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

7-14-2746. Disposition of amounts collected on installment payments of assessments. Amounts collected on installment payments of assessments shall be reserved and disbursed by the treasurer for the payment of principal and interest and for the redemption of the bonds referred to in 7-14-2720.

History: **En. Sec. 5-430, Ch. 197, L. 1965; R.C.M. 1947, 32-3130(4).**

7-14-2747 through 7-14-2750 reserved.

7-14-2751. Use of bonds to make payment of costs. When improvement is ordered upon a petition specifying the method of payment of bonds, the board shall provide that the payment of costs and expenses be made under the provisions of this part by bonds charged against the lands in the district. The bonds may be issued to the contractors in payment, or costs may be paid by the proceeds of the bonds to be issued and sold as hereinafter provided. In all other cases, the board may so provide.

History: **En. Sec. 5-422, Ch. 197, L. 1965; R.C.M. 1947, 32-3122.**

7-14-2752. Order for issuance of bonds. The board shall make and enter an order authorizing and directing the issuance of bonds payable not more than 10 years after the date of issuance.

History: **En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; R.C.M. 1947, 32-3123(1).**

7-14-2753. Details relating to bonds. (1) Each bond shall provide that the holder shall not demand payment until it comes due. It shall bear interest payable annually and shall have interest coupons for each interest payment attached.

(2) Each bond and coupon shall bear the date of issuance and be made payable to bearer. Each bond shall be signed by the chairman of the board and attested by the county clerk. The seal of the board shall be affixed to each bond.

(3) Bonds shall be issued in denominations of not less than $100 or more than $1,000.

(4) Each bond shall contain a reference to the district for which it is issued and to the order and record authorizing the issue. It shall state that it is payable only out of the local improvement funds created by special assessment and not otherwise.

(5) On its face, each bond shall bear the designation of the district: "local improvement district No. .... in .... County, Montana".

(6) The board may also direct in the order providing for issuance of the bonds that they be sold by the treasurer at not less than par value and accrued interest.

History: **(1) thru (5)En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; Sec. 32-3123, R.C.M. 1947; (6)En. Sec. 5-426, Ch. 197, L. 1965; Sec. 32-3126, R.C.M. 1947; R.C.M. 1947, 32-3123(2) thru (6), 32-3126(part).**

7-14-2754. Limit on amount of bond issue. No bond shall be issued in excess of the costs and expenses of the improvements and construction.

History: **En. Sec. 5-423, Ch. 197, L. 1965; amd. Sec. 28, Ch. 234, L. 1971; R.C.M. 1947, 32-3123(7).**

7-14-2755. Notice of use of bonds. (1) If the board provides that payment of costs shall be made by the issuance of bonds, the treasurer shall publish notice for 2 consecutive weeks and mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice shall state that:

(a) the assessment roll has been certified to the treasurer for collection;

(b) unless payment of the whole amount of the assessment is made within 30 days from the date of the notice, special bonds shall be issued against the lands in the district for the payment of the assessment;

(c) if the bonds are issued, they will be payable in annual installments with interest thereon at the rate provided in the bonds.

History: **En. Sec. 5-424, Ch. 197, L. 1965; R.C.M. 1947, 32-3124.**

7-14-2756. Payment of assessment — release from bond obligations. (1) At any time within 30 days after notice, the owner may pay the assessment and release and discharge his lands therefrom and from the operation and effect of the bonds.

(2) No bonds shall be issued until 20 days after the expiration of 30 days after notice. No bonds shall be issued for any assessment paid in full within the 30 days.

History: **En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(1), (2).**

7-14-2757. Redemption of land. The owner of lands may redeem them from all liability for assessment at any time after the 30 days by paying all of the assessment remaining unpaid, together with interest and all charges thereon to the date of maturity of the installment next falling due.

History: **En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(3).**

7-14-2758. Payments to be made to treasurer. All payments under the provisions of 7-14-2756 or 7-14-2757 shall be made to the treasurer, who shall apply them solely to the costs of the improvement or construction.

History: **En. Sec. 5-425, Ch. 197, L. 1965; R.C.M. 1947, 32-3125(4).**

7-14-2759. Issuance of bonds to contractor. Bonds ordered sold by the board may be issued to the contractor constructing the improvement in payment.

History: **En. Sec. 5-426, Ch. 197, L. 1965; R.C.M. 1947, 32-3126(part).**

7-14-2760. Payment of interest. The treasurer shall pay the interest on the bonds out of the funds of the district collected on assessments for the bonds.

History: **En. Sec. 5-427, Ch. 197, L. 1965; R.C.M. 1947, 32-3127(1).**

7-14-2761. Rights of bondholders. (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed in his own name to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest thereon, any such owner shall recover 5% of the costs of his suit.

(2) Any number of holders of bonds for any single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor any owner of any bond shall have any claim against the county through which the bond is issued except for the assessments. His remedy in case of nonpayment shall be confined to the enforcement of the assessments.

(4) A copy of this section shall be plainly written, printed, or engraved on each bond.

History: **En. Sec. 5-428, Ch. 197, L. 1965; R.C.M. 1947, 32-3128.**

7-14-2762. Disposition of bond proceeds. The proceeds of such bonds shall be applied in payment of the costs and expenses of the improvement.

History: **En. Sec. 5-426, Ch. 197, L. 1965; R.C.M. 1947, 32-3126(part).**

7-14-2763. Retirement of outstanding bonds. (1) Whenever there is money in the fund against which the bonds have been issued over and above the amount sufficient for the payment of interest on all unpaid bonds, it shall be used to pay the principal on one or more of the bonds. The treasurer shall call in and pay the bonds in their numerical order.

(2) The call shall be published in the official county newspaper on the day following the maturity date of the installment of assessment or as soon thereafter as practicable. It shall state that special bonds No. .... (giving the serial number or numbers of the bonds called) of the district will be paid on the day the next interest coupons become due. Interest upon the bonds thus called shall cease upon that date.

History: **En. Sec. 5-427, Ch. 197, L. 1965; R.C.M. 1947, 32-3127(2), (3).**

Part 28

Ferries and Wharves

7-14-2801. General powers of county relating to ferries. The board of county commissioners, under such limitations and restrictions as are prescribed by law, may:

(1) lay out, maintain, control, and manage county ferries within the county and levy taxes therefor as provided by law;

(2) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county ferries in adjacent counties, wholly or in such part as may be agreed upon between the boards of the counties concerned, and levy taxes therefor as provided by law.

History: **En. Subd. 4, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.3, R.C.M. 1935; amd. Sec. 12-101, Ch. 197, L. 1965; R.C.M. 1947, 16-1004(part).**

7-14-2802. Construction and operation of ferries uniting two counties. (1) When a public ferry, if constructed, would unite two counties, the boards of county commissioners may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ferrymen are employed on joint ferries, they shall report quarterly to each board, giving such information as each board may require.

History: **En. Sec. 5-207, Ch. 197, L. 1965; R.C.M. 1947, 32-2907.**

7-14-2803. Establishment and operation of public ferry or wharf upon petition. When it shall be made to appear by petition to any board of county commissioners in this state that it is necessary to keep and maintain a public ferry across or a wharf at any unfordable stream, lake, estuary, or bay, any county within the state, through its board of county commissioners, is hereby authorized to construct or to acquire by condemnation or purchase and to operate, maintain, direct, regulate, and control the operation of a ferry across or a wharf at any unfordable stream, lake, estuary, or bay within or bordering on said county, together with all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll.

History: **En. Sec. 1, Ch. 33, L. 1909; re-en. Sec. 4477, R.C.M. 1921; re-en. Sec. 4477, R.C.M. 1935; R.C.M. 1947, 16-1116.**

7-14-2804. Acquisition of property for public ferries and wharves. (1) Upon the proper showing as provided in 7-14-2803, each board of county commissioners may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of Title 70, chapter 30.

(3) No board shall establish or maintain a county ferry or wharf with a landing place in any incorporated city or town which by its charter is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

History: En. Sec. 8-217, Ch. 197, L. 1965; R.C.M. 1947, 32-4017.

7-14-2805. Establishment and operation of public ferry or wharf by county upon its own motion. (1) Any county of the state may own and establish and the board of county commissioners of any county of the state may operate and manage free or toll ferries and wharves for the use of the public and may employ one or more ferrymen to operate such free or toll ferries and wharves.

(2) While such ferries or wharves are so owned by any county and operated and managed by such board, such operation shall be and is hereby expressly declared to be a governmental function.

(3) The board may also lease any ferries or wharves owned by such county to a company, firm, or individual to be operated for the use of the public. Said company, firm, or individual shall give bond, in an amount deemed sufficient by the board, conditioned for the careful and business-like operation of such ferry or wharf in accordance with law and the regulations of said board. While such ferry or wharf is so operated by a lessee of said county, such operation is expressly declared to be the private function of such lessee.

History: En. Sec. 4, Ch. 33, L. 1909; re-en. Sec. 4480, R.C.M. 1921; re-en. Sec. 4480, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1943; R.C.M. 1947, 16-1119.

7-14-2806. Rules and rates for public ferry or wharf. (1) The board of county commissioners shall make all needful rules for the government and operation of county ferries, alter and fix rates of toll, and fix the amount of rental when leased to individuals or companies.

(2) In all cases the rate of toll shall be printed in legible form and posted upon the boat and at the landing places.

History: En. Sec. 5, Ch. 33, L. 1909; re-en. Sec. 4481, R.C.M. 1921; re-en. Sec. 4481, R.C.M. 1935; R.C.M. 1947, 16-1120.

7-14-2807. Tax levy for public ferry. The board of county commissioners may levy a special tax, not to exceed 2 mills on the dollar, on the taxable property of the county for the purpose of constructing, maintaining, and repairing public ferries.

History: En. Sec. 1, Ch. 53, L. 1959; R.C.M. 1947, 32-1518.

7-14-2808 through 7-14-2820 reserved.

7-14-2821. Permission to operate ferry between counties. (1) When authority to erect and keep a ferry over waters dividing two counties is desired, application must be made to the board of commissioners of the county situated on the left bank descending the river, creek, or slough.

(2) The board may not grant authority to erect a toll ferry until the notice of the intended application is given as required in 7-14-2822.

(3) After notice is given, an application must be made in writing, under oath, to the board of the proper county. The applications must contain a description of the proposed ferry landings; the names of the owners, if known, of the proposed landings; and a statement that notice of the application has been served at least 10 days prior to the date of application on those landowners who are not parties to the application.

History: (1)En. Sec. 2820, Pol. C. 1895; re-en Sec. 1457, Rev. C. 1907; re-en. Sec. 1766, R.C.M. 1921; Cal. Pol. C. Sec. 2843; re-en. Sec. 1766, R.C.M. 1935; Sec. 32-1501, R.C.M. 1947; (2)En. Sec. 2821, Pol. C. 1895; re-en. Sec. 1458, Rev. C. 1907; re-en. Sec. 1767, R.C.M. 1921; Cal. Pol. C. Sec. 2844; re-en. Sec. 1767, R.C.M. 1935; amd. Sec. 39, Ch. 136, L. 1974; Sec. 32-1502, R.C.M. 1947; (3)En. Sec. 2822, Pol. C. 1895; re-en. Sec. 1459, Rev. C. 1907; re-en. Sec. 1768, R.C.M. 1921; Cal. Pol. C. Sec. 2892; re-en. Sec. 1768, R.C.M. 1935; Sec. 32-1503, R.C.M. 1947; R.C.M. 1947, 32-1501, 32-1502, 32-1503(part); amd. Sec. 8, Ch. 253, L. 1979.

7-14-2822. Notice of application to operate ferry. Every applicant for authority to erect and take tolls on a public ferry must publish notice, specifying the location and the time when and place where the application will be made:

(1) in at least one newspaper in each county in which the ferry is or touches or, if there is no newspaper published therein, then in one published in an adjoining county; and

(2) by posting three notices in three public places in the township for 4 successive weeks.

History: En. Sec. 2822, Pol. C. 1895; re-en. Sec. 1459, Rev. C. 1907; re-en. Sec. 1768, R.C.M. 1921; Cal. Pol. C. Sec. 2892; re-en. Sec. 1768, R.C.M. 1935; R.C.M. 1947, 32-1503(part).

7-14-2823. Hearing and decision on application. (1) At the hearing, proof of giving the notice required by 7-14-2821 and 7-14-2822 must be made, and any person may appear and contest the application. If the board of commissioners finds that the ferry is either a public necessity or convenience and that the applicant is a suitable person and, by reason of the ownership of the landing or failure of the owner thereof to apply, is entitled thereto, authority to erect and take tolls on the ferry may be granted to him for the term of 10 years. The board may at any time they see fit authorize and maintain fords across any water within any distance of any ferry.

(2) The board granting authority to keep a public ferry must at the same time:

(a) fix the amount of a penal bond to be given by the person or corporation owning or taking tolls on the ferry for the benefit of the county and all persons crossing or desiring to cross the same and provide for the annual renewal thereof;

(b) fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than $3 or over $100 per month, payable annually;

(c) fix the rate of tolls which may be collected for crossing the ferry;

(d) make all necessary orders relative to the construction, erection, and business of ferries which they have by law the power to make.

(3) When a county commissioner is interested in an application to erect, construct, or take tolls on a ferry, he must not act in any such matters.

History: Ap. p. Sec. 2823, Pol. C. 1895; re-en. Sec. 1460, Rev. C. 1907; re-en. Sec. 1769, R.C.M. 1921; Cal. Pol. C. Sec. 2893; re-en. Sec. 1769, R.C.M. 1935; Sec. 32-1504, R.C.M. 1947; Ap. p. Sec. 2824, Pol. C. 1895; re-en. Sec. 1461, Rev. C. 1907; re-en. Sec. 1770, R.C.M. 1921; Cal. Pol. C. Sec. 2845; re-en. Sec. 1770, R.C.M. 1935; Sec. 32-1505, R.C.M. 1947; (3)En. Sec. 2831, Pol. C. 1895; re-en. Sec. 1468, Rev. C. 1907; re-en. Sec. 1777, R.C.M. 1921; Cal. Pol. C. Sec. 2852; re-en. Sec. 1777, R.C.M. 1935; Sec. 32-1512, R.C.M. 1947; R.C.M. 1947, 32-1504, 32-1505, 32-1512.

7-14-2824. Preference for landowner. The owner of the land on either bank of the waters to be crossed, with the owner of the land on the left bank descending given preference over the owner of the land on the right bank, is entitled to preference in procuring authority to construct a ferry. Whenever the owners of the banks do not apply for such authority within a reasonable time after the necessity therefor arises, the board of commissioners may grant authority to another.

History: En. Sec. 2833, Pol. C. 1895; re-en. Sec. 1470, Rev. C. 1907; re-en. Sec. 1779, R.C.M. 1921; Cal. Pol. C. Sec. 2854; re-en. Sec. 1779, R.C.M. 1935; R.C.M. 1947, 32-1514; amd. Sec. 9, Ch. 253, L. 1979.

7-14-2825. Establishment of new ferry near existing ferry. No toll ferry must be established within 1 mile immediately above or below a regularly established ferry unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice required, notice of intention to apply for authority to erect a toll ferry must be served upon the proprietor of the ferry already established, at least 10 days prior thereto, giving the time and place and grounds of such application.

History: En. Sec. 2832, Pol. C. 1895; re-en. Sec. 1469, Rev. C. 1907; re-en. Sec. 1778, R.C.M. 1921; Cal. Pol. C. Sec. 2853; re-en. Sec. 1778, R.C.M. 1935; R.C.M. 1947, 32-1513.

7-14-2826. Regulation of ferry operation — penalties. (1) The board of commissioners may make all needful rules for the government of ferries and ferrykeepers prescribing:

(a) how many boats must be kept, their character, and how propelled;

(b) the number of hands, boatmen, or ferrymen to be employed and rules for their government;

(c) when and under what circumstances to make trips in the nighttime;

(d) who may be ferried free of toll;

(e) in what cases of danger or peril not to cross;

(f) penalties for violation of regulations;

(g) in case of steamboats, the rate of speed;

(h) the method of and preference in loading and crossing; and

(i) how and by whom action must be brought to recover penalties.

(2) Subject to the foregoing regulations, ferrykeepers must make trips to accommodate all passengers who desire to cross, and any failure to do so subjects the franchise to forfeiture by a proper proceeding for that purpose.

(3) The owner of every ferry must have the rates of toll, as fixed by the board, printed or written and posted in some conspicuous place on or near the ferry.

(4) All ferrykeepers must keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles.

For every day compliance herewith is neglected, $25 is forfeited, to be collected for the use of the road fund of the county.

History: (1)En. Sec. 2826, Pol. C. 1895; re-en. Sec. 1463, Rev. C. 1907; re-en. Sec. 1772, R.C.M. 1921; Cal. Pol. C. Sec. 2894; re-en. Sec. 1772, R.C.M. 1935; Sec. 32-1507, R.C.M. 1947; (2)En. Sec. 2827, Pol. C. 1895; re-en. Sec. 1464, Rev. C. 1907; re-en. Sec. 1773, R.C.M. 1921; re-en. Sec. 1773, R.C.M. 1935; Sec. 32-1508, R.C.M. 1947; (3)En. Sec. 2835, Pol. C. 1895; re-en. Sec. 1472, Rev. C. 1907; re-en. Sec. 1781, R.C.M. 1921; Cal. Pol. C. Sec. 2856; re-en. Sec. 1781, R.C.M. 1935; Sec. 32-1516, R.C.M. 1947; (4)En. Sec. 2836, Pol. C. 1895; re-en. Sec. 1473, Rev. C. 1907; re-en. Sec. 1782, R.C.M. 1921; Cal. Pol. C. Sec. 2858; re-en. Sec. 1782, R.C.M. 1935; Sec. 32-1517, R.C.M. 1947; R.C.M. 1947, 32-1507, 32-1508, 32-1516, 32-1517.

7-14-2827. Surety bond required. The bond required of the owner or keeper of the ferry must be in the sum fixed by the board of commissioners, with one or more sureties, and conditioned that the ferry will be kept in good repair and condition and that the keeper will faithfully comply with the laws of the state and all legal orders of the board regulating the same and pay all damages recovered against him by any person injured or damaged by reason of delay at or defect in such ferry or in any manner resulting from a noncompliance with the laws or lawful orders regulating the same. The bond must be approved by the board.

History: En. Sec. 2829, Pol. C. 1895; re-en. Sec. 1466, Rev. C. 1907; re-en. Sec. 1775, R.C.M. 1921; Cal. Pol. C. Sec. 2850; re-en. Sec. 1775, R.C.M. 1935; R.C.M. 1947, 32-1510.

7-14-2828. Report required. Every owner or keeper of a ferry must report annually to the board of commissioners from which his license is obtained, under oath, the following facts:

(1) the actual cost of the construction or erection and equipment of the ferry;

(2) the repairs made during the preceding year and the actual cost thereof;

(3) the expense of labor and hire of agents and other costs necessarily incurred in and about the conduct of his business;

(4) the amount of tolls collected; and

(5) the estimated actual cash value of the ferry, exclusive of the franchise.

History: En. Sec. 2825, Pol. C. 1895; re-en. Sec. 1462, Rev. C. 1907; re-en. Sec. 1771, R.C.M. 1921; Cal. Pol. C. Sec. 2847; re-en. Sec. 1771, R.C.M. 1935; R.C.M. 1947, 32-1506.

7-14-2829. Acquisition of land for ferry. When there are lands necessary for the construction, erection, or use of such ferry which cannot be procured by agreement between the owner and the landowner, the right-of-way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

History: En. Sec. 2834, Pol. C. 1895; re-en. Sec. 1471, Rev. C. 1907; re-en. Sec. 1780, R.C.M. 1921; Cal. Pol. C. Sec. 2855; re-en. Sec. 1780, R.C.M. 1935; R.C.M. 1947, 32-1515.

7-14-2830. Procedure to administer license tax. The license tax for a ferry connecting two counties must be paid to the treasurer of the county granting the license issued, but the treasurer of such county must annually pay to the treasury of the county in which the other end or landing of the ferry is located one-half of the sum so received.

History: En. Sec. 2830, Pol. C. 1895; re-en. Sec. 1467, Rev. C. 1907; re-en. Sec. 1776, R.C.M. 1921; Cal. Pol. C. Sec. 2851; re-en. Sec. 1776, R.C.M. 1935; R.C.M. 1947, 32-1511.

7-14-2831. Use of penalties. Penalties recovered under 7-14-2821 through 7-14-2830 must be paid to the county treasury for the use of the general road fund of the county.

History: En. Sec. 2828, Pol. C. 1895; re-en. Sec. 1465, Rev. C. 1907; re-en. Sec. 1774, R.C.M. 1921; Cal. Pol. C. Sec. 2895; re-en. Sec. 1774, R.C.M. 1935; R.C.M. 1947, 32-1509.

Parts 29 through 40 reserved

Part 41

General Provisions Related to Municipal Trafficways and Public Grounds

7-14-4101. Municipal authority to establish, alter, and maintain trafficways and public grounds. (1) The city or town council has power to lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, and public grounds and to vacate the same.

(2) The council has power to order any work provided in this code to be done upon the streets, alleys, or public places of a city or town.

History: (1)En. Subd. 6, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.5, R.C.M. 1935; Sec. 11-906, R.C.M. 1947; (2)En. Sec. 4879, Pol. C. 1895; re-en. Sec. 3365, Rev. C. 1907; re-en. Sec. 5223, R.C.M. 1921; re-en. Sec. 5223, R.C.M. 1935; Sec. 84-4736, R.C.M. 1947; R.C.M. 1947, 11-906(part), 84-4736.

7-14-4102. Regulation of trafficways and public grounds. The city or town council has power to:

(1) regulate and prevent the use or obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction;

(2) regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds;

(3) regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town;

(4) provide for and regulate street crossings, curbs, and gutters;

(5) prevent horse racing or immoderate driving or riding in the streets of the city or town and regulate and provide for the hitching of all animals on the streets;

(6) regulate or prohibit coasting, skating, sliding, or tobogganing on the streets or alleys or the indulgence in other amusements dangerous or annoying to the inhabitants or having a tendency to frighten animals.

History: En. Subds. 8, 9, 10, 40, 41, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.7, 5039.8, 5039.9, 5039.39, 5039.40, R.C.M. 1935; R.C.M. 1947, 11-910, 11-911, 11-912, 11-942, 11-943.

7-14-4103. Regulation of motor vehicles. (1) The council of any incorporated city or town shall have power, by ordinance, to regulate motor vehicles and their speed within the limits of such city or town and to prescribe and enforce fines and penalties for violation of such regulations.

(2) As used in this section, the term "motor vehicles" shall include all vehicles propelled by any power other than muscular power, except traction

engines, road rollers, fire wagons and engines, fire department vehicles, and police patrol wagons.

History: (1)En. Sec. 1, Ch. 49, L. 1917; re-en. Sec. 5041, R.C.M. 1921; re-en. Sec. 5041, R.C.M. 1935; Sec. 11-1002, R.C.M. 1947; (2)En. Sec. 2, Ch. 49, L. 1917; re-en. Sec. 5042, R.C.M. 1921; re-en. Sec. 5042, R.C.M. 1935; Sec. 11-1003, R.C.M. 1947; R.C.M. 1947, 11-1002, 11-1003.

7-14-4104. Prevention of obstructions on trafficways and public grounds. The city or town council has power to prevent the encumbering of streets, sidewalks, alleys, or public grounds with carriages, wagons, lumber, firewood, or other obstacles or materials.

History: En. Subd. 38, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.37, R.C.M. 1935; R.C.M. 1947, 11-940.

7-14-4105. Lighting and cleaning of trafficways and public grounds. The city or town council has power to:

(1) provide for lighting and cleaning the streets, alleys, and avenues;

(2) regulate the disposition and removal of ashes, garbage, or other offensive matter in any street or alley, on public grounds, or on any premises;

(3) regulate the use of sidewalks and require the owners of the adjoining premises to keep the same free from snow or other obstruction.

History: En. Subd. 7, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.6, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1943; R.C.M. 1947, 11-909(part).

7-14-4106. Payment for cost of removing waste. (1) The city or town council has power to provide for levying the cost of the removal provided for in 7-14-4105(2) as a special tax against the property from which such matter was deposited.

(2) The city or town council may further, until full liquidation is realized, include in such tax an amount not to exceed 20% of any floating indebtedness consisting of valid outstanding warrants drawn and issued against the fund or funds used to defray the expense of removing such matter, existing at the close of business on June 30, 1943, together with not to exceed such per centum of the current interest thereon from such last-mentioned date. The money derived from such portion of such levy and assessment for such additional amount, if included in such tax, may only be expended toward liquidating such floating indebtedness, together with the interest thereon, and not otherwise.

History: En. Subd. 7, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.6, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1943; R.C.M. 1947, 11-909(part).

7-14-4107. Sprinkling of trafficways. The city or town council has power to provide for the sprinkling of the streets, alleys, and public places of the city or town and to fix the rates to defray the cost of said work.

History: En. Subd. 69, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.68, R.C.M. 1935; R.C.M. 1947, 11-971.

7-14-4108. Authority to contract for road work when federal funds involved. Whenever highway construction work is to be financed in whole or in part by federal funds, the council, commission, or other governing body of any city or town may contract jointly or independently with the department of highways, United States federal highway administration, or other federal agency for the construction or reconstruction of highways, roads, and streets, to acquire rights-of-way, and to do any other thing essential and practical in securing the highway, road, and street construction or reconstruction or rights-of-way as may be agreed upon between the council, commission, or other governing body and the department of highways or federal agency. All contracts for work on highways, roads, and streets which are let pursuant to this authority shall be let by the highway commission.

History: **En. Sec. 1, Ch. 69, L. 1957; amd. Sec. 1, Ch. 316, L. 1974; R.C.M. 1947, 11-1023.**

7-14-4109. Power to order certain improvements without creation of special improvement district. (1) Without the formation of a special improvement district, the city council may order sidewalks, curbs, or gutters constructed in front of any lot or parcel of land and may order alley approaches constructed or replaced adjacent to any lot or parcel of land.

(2) Whenever the council orders any such sidewalk, curb, or gutter constructed or any such alley approach constructed or replaced, the order shall be entered upon the minutes of the council and shall name the street along which the sidewalk, curb, or gutter is to be constructed or along which the alley approach is to be constructed or replaced.

(3) After the making of such order, written notice thereof shall be given the owner or agent of the owner of such property or the owners or agents of all adjacent owners having access to their properties by the alley approach, as appropriate, in such manner as the council may direct.

(4) If the owner or agent of the owner of such lot or parcel of land or if the owners or agents of all adjacent owners having access to their property by the alley approach fail or neglect for a period of 30 days after the date of service of the notice to cause such sidewalk, curb, or gutter to be constructed or to cause such alley approaches to be constructed or replaced, the city may construct or cause the sidewalk, curb, or gutter to be constructed or may construct or cause the alley approach to be constructed and shall assess the cost thereof, including engineering costs and the costs enumerated in 7-12-4121 and 7-12-4169, against the property in front of which the same is constructed or against the lots or parcels of land having access via the constructed alley approaches. The collection of the assessed costs shall be as provided in 7-12-4181 through 7-12-4191.

(5) (a) When any sidewalk, curb, or gutter or alley approach is constructed by or under direction of the city council, payment for the construction shall be made by special warrants in such form as may be prescribed by ordinance and drawn against a fund to be known as the special sidewalk, curb, and gutter fund or the special alley approach fund, as appropriate, and the council may provide for the payment of interest annually.

(b) The warrants drawn on the special alley approach fund shall bear interest at a rate of up to 6% a year.

History: **Ap. p. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R.C.M. 1921; amd. Sec. 1, Ch. 12, L. 1929; re-en. Sec. 5244, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971; Sec. 11-2226, R.C.M. 1947; Ap. p. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; Sec. 11-2226.1, R.C.M. 1947; R.C.M. 1947, 11-2226(part), 11-2226.1(part); amd. Sec. 10, Ch. 253, L. 1979.**

7-14-4110. Assessments for costs. (1) The payment of assessments to defray the cost of construction of the sidewalks, curbs, and gutters referred to in 7-14-4109 or any combination thereof or alley approach may be spread over a term of not to exceed 8 years, payment to be made in equal annual installments.

(2) The city council shall, annually before the first Monday of October, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs, and gutters or any combination thereof have been constructed under orders of the city council or each lot or parcel of land having access to said property via the alley approach which has been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: **Ap. p. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R.C.M. 1921; amd. Sec. 1, Ch. 12, L. 1929; re-en. Sec. 5244, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1965; amd. Sec. 15, Ch. 234, L. 1971; Sec. 11-2226, R.C.M. 1947; Ap. p. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; Sec. 11-2226.1, R.C.M. 1947; R.C.M. 1947, 11-2226(part), 11-2226.1(part).**

7-14-4111. Determination of alley approach. What constitutes an alley approach shall be defined by the city council of each municipality which orders in alley approaches as provided in 7-14-4109.

History: **En. 11-2226.1 by Sec. 1, Ch. 206, L. 1971; R.C.M. 1947, 11-2226.1(part).**

7-14-4112. Change of name of street. (1) Any town or city council may in its judgment, when it appears to the best interest of the town or city and the inhabitants thereof, expressed by resolution duly and regularly passed and adopted, change the name or number of any street or avenue, subject to the conditions provided for in subsection (2), except that 51% of the property owners objecting to the change of name or question involved shall be supreme in this matter.

(2) The town or city engineer (if there be no such officer, the council may employ one for such purpose) shall prepare a plat showing such subdivisions, streets, and avenues affected by such change, with the appropriate notation of change thereon. Upon approval of such plat by the council and the filing of the same as approved with the county clerk and recorder wherein the town or city is situated, the names or numbers of said streets and avenues shall be deemed changed in accordance to the terms of said resolution as provided for in subsection (1).

History: **En. Secs. 1, 2, Ch. 21, L. 1939; R.C.M. 1947, 11-907, 11-908.**

7-14-4113. Use of city road fund. The city treasurer shall hold the fees paid pursuant to 7-14-2512(1)(b) in a separate city road fund which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

History: **En. Sec. 7-203, Ch. 197, L. 1965; amd. Sec. 2, Ch. 467, L. 1975; R.C.M. 1947, 32-3703(2).**

7-14-4114. Procedure to discontinue streets. (1) The council may discontinue a street or alley or any part thereof in a city or town upon the petition in writing of all owners of lots on the street or alley, if it can be done without detriment to the public interest.

(2) Where the street or alley is to be closed for school purposes, a petition signed by 75% of the lot owners on the whole street or alley to be closed will be required.

(3) Before acting upon such petition, a notice must be published or posted in three public places, stating when such petition will be acted on and what street or alley or part thereof is asked to be vacated. Such notice must be published in a newspaper or posted at least 1 week before the petition is acted on.

History: (1), (2)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; Sec. 11-2801, R.C.M. 1947; (3)En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5031, Pol. C. 1895; re-en. Sec. 3480, Rev. C. 1907; re-en. Sec. 5307, R.C.M. 1921; re-en. Sec. 5307, R.C.M. 1935; Sec. 11-2802, R.C.M. 1947; R.C.M. 1947, 11-2801(part), 11-2802.

7-14-4115. Discontinuance of street not to affect utility easements. The vacation authorized by 7-14-4114 shall not affect the right of any public utility to continue to maintain its plant and equipment in any such streets or alleys.

History: En. Sec. 429, 5th Div. Comp. Stat. 1887; amd. Sec. 5030, Pol. C. 1895; re-en. Sec. 3479, Rev. C. 1907; re-en. Sec. 5306, R.C.M. 1921; amd. Sec. 1, Ch. 13, L. 1929; re-en. Sec. 5306, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1941; amd. Sec. 1, Ch. 36, L. 1945; R.C.M. 1947, 11-2801(part).

7-14-4116 through 7-14-4120 reserved.

7-14-4121. Maintenance and regulation of public grounds. The city or town council has power to provide for enclosing, improving, and regulating all public grounds belonging to the city or town.

History: En. Subd. 74, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.73, R.C.M. 1935; R.C.M. 1947, 11-976.

7-14-4122. Construction and maintenance of sidewalks, curbs, and gutters. (1) The city or town council has power to regulate and provide for the construction or repair of sidewalks, foot pavements, curbs, gutters, or any combination thereof.

(2) If the owner of any lot fails to comply with the provisions of the ordinance within such time as may be prescribed thereby, the council may contract for the construction and repair of such sidewalks, pavements, curbs, gutters, or any combination thereof and the city or town may pay for the same. The amount so paid is a lien upon the lot and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction.

History: En. Subd. 65, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.64, R.C.M. 1935; R.C.M. 1947, 11-967.

7-14-4123. Regulation of sidewalks. The city or town council has power to prevent the riding or driving of animals or the drawing or riding of vehicles of any kind on the sidewalks of the city or the doing of damage in any way to the sidewalks.

History: En. Subd. 39, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.38, R.C.M. 1935; R.C.M. 1947, 11-941.

Part 42

Establishment and Change of Street Grade

7-14-4201. Establishment and alteration of street grade. (1) The city or town council has power to establish the grade of any street, alley, or avenue.

(2) When the grade has been established, it must not be changed except by a vote of the majority of the council and not then until the damage to property owners caused by the change of grade has been assessed and determined by three disinterested appraisers, who must be appointed by the mayor and confirmed by the council, who must make an appraisement, taking into consideration the benefits, if any, to the property, and who must file their report with the clerk within 10 days after receiving notice of their appointment. The amount of damages so assessed must be tendered to the owner or his agent before any change of grade is made.

History: En. Subd. 68, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.67, R.C.M. 1935; R.C.M. 1947, 11-970.

7-14-4202. Payment of damages resulting from change of grade. When the grade of any street or sidewalk in any city or town is established by the corporate authority of such city or town and a building shall thereafter be constructed upon a lot abutting on said street, no change must be made in the grade of such street or sidewalk which requires the raising or lowering of any building so constructed until the damages which may accrue by reason of such raising or lowering are ascertained and paid as is hereinafter provided.

History: En. Sec. 4940, Pol. C. 1895; re-en. Sec. 3441, Rev. C. 1907; re-en. Sec. 5300, R.C.M. 1921; re-en. Sec. 5300, R.C.M. 1935; R.C.M. 1947, 11-2601.

7-14-4203. Determination of damages. (1) In case the council of such city or town and the owner of such building are unable to agree upon the amount of such damages, the council must appoint three disinterested freeholders of such city or town to appraise such damages.

(2) The appraisers so appointed, after being duly sworn, must appraise the damage and make two written reports thereof, signed by at least a majority of them, one of which must be delivered to the clerk of such city or town to be immediately filed in his office and the other to the owner of the building. Such report must be made and delivered within 10 days after the appointment of the appraisers.

History: Ap. p. Sec. 4941, Pol. C. 1895; re-en. Sec. 3442, Rev. C. 1907; re-en. Sec. 5301, R.C.M. 1921; re-en. Sec. 5301, R.C.M. 1935; Sec. 11-2602, R.C.M. 1947; Ap. p. Sec. 4942, Pol. C. 1895; re-en. Sec. 3443, Rev. C. 1907; re-en. Sec. 5302, R.C.M. 1921; re-en. Sec. 5302, R.C.M. 1935; Sec. 11-2603, R.C.M. 1947; R.C.M. 1947, 11-2602, 11-2603.

7-14-4204. Appeal from determination of damages. (1) Within 20 days after the filing of the report with the clerk, either party feeling dissatisfied with such appraisement may file in the office of the clerk of the district court within the county in which such city or town is located a copy of such report, certified by the clerk of such city or town, and file with said clerk and serve on the opposite party a notice of appeal from such report.

(2) Upon the filing of the report and the notice of appeal, the clerk of the district court must cause such proceedings to be entered on the register of actions, designating such city or town as plaintiff and the owner of the building as defendant. The question of the amount of damages may be tried by a jury or the court.

(3) The report of the appraisers is the complaint, all the material facts of which in reference to damages are considered denied, and these constitute the issues to be tried.

History: (1), (2)En. Sec. 4943, Pol. C. 1895; re-en. Sec. 3444, Rev. C. 1907; re-en. Sec. 5303, R.C.M. 1921; re-en. Sec. 5303, R.C.M. 1935; Sec. 11-2604, R.C.M. 1947; (3)En. Sec. 4944, Pol. C.

1895; re-en. Sec. 3445, Rev. C. 1907; re-en. Sec. 5304, R.C.M. 1921; re-en. Sec. 5304, R.C.M. 1935; Sec. 11-2605, R.C.M. 1947; R.C.M. 1947, 11-2604, 11-2605.

7-14-4205. Payment of costs. In case the owner of the building appeals and the damages are not increased or in case the city or town appeals and the damages are decreased in the district court, the costs must be paid by the defendant. In all other cases or in the case no appeal is taken, the costs must be paid by the city or town.

History: En. Sec. 4945, Pol. C. 1895; re-en. Sec. 3446, Rev. C. 1907; re-en. Sec. 5305, R.C.M. 1921; re-en. Sec. 5305, R.C.M. 1935; R.C.M. 1947, 11-2606.

Part 43

Municipal Regulation of Railways and Street Railroads

7-14-4301. Regulation of railways. (1) The city or town council has power to grant the right-of-way through the streets, avenues, and other property of a city or town for the purpose of street or other railroads, to regulate the running and management of the same and to compel the owner of such street or other railroad to keep the street in repair when occupied by such street or other railroad, to regulate the speed of railroad engines, and to require railroad companies to station flagmen at street crossings.

(2) The city or town council has power to regulate and control the laying of railroad tracks and to prohibit the use of engines and locomotives propelled by steam or otherwise or to regulate the speed thereof when used.

History: (1)En. Subd. 66, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.65, R.C.M. 1935; Sec. 11-968, R.C.M. 1947; (2)En. Subd. 11, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.10, R.C.M. 1935; Sec. 11-913, R.C.M. 1947; R.C.M. 1947, 11-913, 11-968.

7-14-4302. Regulation of lighting for railway right-of-way — crossings. (1) The city or town council may require the lighting of any railroad track or route within a city or town, the cars of which are propelled by steam or otherwise, and fix and determine the number, style, and size of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location of the lampposts.

(2) The city or town council may:

(a) require the construction of crossings on the line of any railroad track or route within the city or town, the cars of which are propelled by steam or otherwise, where the track intersects or crosses any street, alley, or public highway or runs along the same; and

(b) fix and determine the size, kind, and grade of the crossing.

(3) In case the owner of such railroad fails to comply with the requirements, the council may cause the same to be done. The council may assess the expense thereof against the owner, and the expense constitutes a lien on any property belonging to the owner within the city or town and may be collected as other taxes.

History: En. Subd. 12, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.11, R.C.M. 1935; R.C.M. 1947, 11-914; amd. Sec. 11, Ch. 253, L. 1979.

7-14-4303. Authorization for and regulation of street railroads. The city or town council has power to license and authorize the construction and operation of street railroads and to require them to conform to the grade of the street as the same is or may be established.

History: En. Subd. 13, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.12, R.C.M. 1935; R.C.M. 1947, 11-915.

Part 44

Municipal Bus Services

7-14-4401. Provision of bus service. Whenever a city or town is not being served by a bus company or operator operating on a regular schedule and under the jurisdiction of the public service commission or if such service is likely to be discontinued in the immediate future, the city or town council of the incorporated city or town:

(1) may contract an indebtedness of any such city or town upon the credit thereof by borrowing money or issuing bonds for the purchase, development, operation, or leasing of motorbuses and buslines for the transportation of passengers within the corporate limits of such cities and towns and to operate the same to any point or points beyond these limits not to exceed 8 miles measured along the route of the busline;

(2) shall have the power to enter into a contract or contracts or to enter into a lease or a lease and operating agreement with an independent carrier or independent carriers for the transportation of passengers by bus within the corporate limits of such city or town and to and from any point or points beyond said limits not to exceed 8 miles measured along the route of said busline or buslines.

History: Ap. p. Sec. 1, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; amd. Sec. 24, Ch. 566, L. 1977; Sec. 11-1019, R.C.M. 1947; Ap. p. Sec. 3, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; Sec. 11-1021, R.C.M. 1947; R.C.M. 1947, 11-1019(part), 11-1021(part).

7-14-4402. Limit on indebtedness to provide bus service. The total amount of indebtedness authorized under 7-14-4401(1) to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 28% of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes. No money may be borrowed or bonds issued for the purposes specified in 7-14-4401(1) until the proposition has been submitted to the vote of the taxpayers of the city or town and the majority vote cast in its favor.

History: En. Sec. 1, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; amd. Sec. 24, Ch. 566, L. 1977; R.C.M. 1947, 11-1019(part); amd. Sec. 53, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Increased 18% to 28%.

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval."

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-14-4403. Operation of municipal busline. (1) The city or town council or commission shall have authority to provide for the management and operation of the system authorized by 7-14-4401(1) and to do all things necessary for the successful operation of said transportation system.

(2) Such operations shall be subject to all the provisions of (Title 69, chapter 12) except that:

(a) such municipality may be issued a certificate of public convenience and necessity without proof of the existence of public convenience and necessity; and

(b) the municipality shall be exempt from the payment of fees provided by 69-12-421 and 69-12-422.

History: En. Sec. 2, Ch. 101, L. 1951; amd. Sec. 1, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; R.C.M. 1947, 11-1020.

7-14-4404. Tax levy for contracts to operate bus service. For the purpose of raising the necessary money to defray the cost of the transportation service authorized by 7-14-4401(2) pursuant to such contract, lease, or lease and operating agreement with such independent carrier or carriers, the city or town council may annually levy a tax on the taxable value of all taxable property within the limits of the city or town. Whenever the council of the city or town considers it necessary to raise money by taxation for such purpose in excess of the levy now allowed by law, the council of the city or town shall in the manner prescribed by law submit the question of such additional levy to the qualified electors of the city or town, either at the regular annual election held in the city or town or at a special election called for that purpose by the council of the city or town. The additional levy in excess of the levy now allowed by law may not exceed 1 ½ mills.

History: En. Sec. 3, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 11-1021(part); amd. Sec. 12, Ch. 253, L. 1979.

7-14-4405. Bids for bus service contracts authorized — operation of bus service. The city or town council shall have power and authority to call for bids from independent carriers for such transportation service authorized by 7-14-4401(2) and to do all things necessary or proper for establishment and maintenance of such transportation service by contract, lease, or lease and operating agreement.

History: En. Sec. 4, Ch. 211, L. 1955; amd. Sec. 1, Ch. 120, L. 1957; R.C.M. 1947, 11-1022.

Part 45

Municipal Parking

7-14-4501. Acquisition, construction, and maintenance of parking areas. A city or town council shall have power to:

(1) acquire by lease, gift, purchase, or condemnation lots or lands for use as parking areas for motor vehicles;

(2) construct and maintain thereon or on any premises owned or under lease by such city or town suitable parking facilities for the use of the public and for general traffic control; and

(3) make charges for the use of such facilities.

History: **En. Sec. 1, Ch. 96, L. 1951; R.C.M. 1947, 11-1018(part).**

7-14-4502. Bond issue to finance parking areas. A city or town council shall have power to:

(1) issue bonds or other securities for the payment of the lots or lands and facilities referred to in 7-14-4501, payable in whole or in part from the revenues of any such parking lots or areas or parking facilities or from other sources; and

(2) pledge, place a charge upon, or otherwise make available as additional security for the payment of such bonds or securities any or all revenues from any or all street parking meters owned or to be owned and controlled by said city or town.

History: **En. Sec. 1, Ch. 96, L. 1951; R.C.M. 1947, 11-1018(part).**

7-14-4503 through 7-14-4510 reserved.

7-14-4511. Provision of parking meters in smaller municipalities — ordinance required. The city or town council of any incorporated city or town of 2,500 population or less is hereby empowered to enact an ordinance or ordinances:

(1) to purchase, rent, lease, or otherwise acquire coin-operating parking meters or other devices or instruments used for the purpose of measuring the duration of time an automobile or other vehicle is parked;

(2) to install, maintain, and operate said meters, devices, or instruments at or near any public street, highway, avenue, or other public place within the corporate limits of such city or town;

(3) to provide for such regulations as necessary to govern the use of its public streets, highways, avenues, or other public places for the purpose of parking automobiles or other vehicles and the use of said meters, devices, or instruments in conjunction therewith, including the establishment and designation of zones or areas where said meters, devices, or instruments are to be used.

History: **En. Sec. 1, Ch. 91, L. 1949; R.C.M. 1947, 11-1015.**

7-14-4512. Referendum on parking meters prior to enacting ordinance. No ordinance or ordinances providing for the purchasing, renting, leasing, or otherwise acquiring or installing, maintaining, operating, or using such parking meters, devices, or instruments shall be enacted until and unless the question of whether or not such ordinance or ordinances shall be enacted has been submitted to the qualified electors of such city or town at a general election or special election called for that purpose and unless at such election a majority of the votes cast for and against the question shall have been in favor of the enacting of said ordinance or ordinances.

History: **En. Sec. 2, Ch. 91, L. 1949; R.C.M. 1947, 11-1016.**

Part 46

Parking Commissions

7-14-4601. Findings and purpose. (1) It is hereby determined and declared that excessive curb parking of motor vehicles in urban and metropolitan areas and the lack of adequate offstreet parking facilities in some cities is against the public interest.

(2) The purpose of this part is to provide means whereby cities in which additional offstreet parking facilities are considered necessary may obtain and provide same and whereby such cities may regulate onstreet and offstreet parking in a coordinated manner.

History: **En. Sec. 1, Ch. 223, L. 1951; amd. Sec. 1, Ch. 127, L. 1955; amd. Sec. 2, Ch. 77, L. 1975; R.C.M. 1947, 11-3701.**

7-14-4602. Definitions. The following terms, wherever used or referred to in this part, shall have the following respective meanings unless a different meaning clearly appears from the context:

(1) "City" shall mean the particular city for which a particular commission may be created or which may act as such a commission pursuant to resolution of its legislative body.

(2) "Clause" includes article, section, subsection, paragraph, sentence, or provision.

(3) "Clerk" shall mean the clerk of the city or the officer charged with the duties customarily imposed on such clerk.

(4) "Commission" or "parking commission" shall mean any of the public corporations which may be created by a city and any city which may exercise the powers of a parking commission pursuant to resolution adopted by its legislative body under the provisions of 7-14-4603 through 7-14-4608.

(5) "Indenture" means ordinance, resolution, or indenture which may be passed, adopted, or entered into by a commission or by the legislative body of a city.

(6) "Legislative body" shall mean the city council or other body in which the general legislative powers of the city are vested.

(7) "Mayor" shall mean the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor or executive head of the city.

(8) "Obligee of the commission" or "obligee" shall be any bondholder, trustee or trustees for any bondholders, or lessor demising to the commission property used in connection with a parking facility or any assignee or assignees of such lessor's interest or any part thereof and the state or the United States or any agency of either when a party to any contract with a commission by which aid or a loan is given or made to the commission.

(9) "Project" shall mean any acquisition, improvement, construction, or undertaking of any kind authorized by this part.

(10) "State public body" means the state or any city, commission, or any other subdivision or public body of the state.

History: **En. Sec. 2, Ch. 223, L. 1951; amd. Sec. 1, Ch. 401, L. 1973; R.C.M. 1947, 11-3702.**

7-14-4603. Creation of parking commission authorized. A city may create, as provided for in 7-14-4603 through 7-14-4608, a public body to be known as the parking commission of the city. The commission of any city shall not transact any business or exercise any powers under this part unless and until the legislative body of the city shall by resolution declare that there is need for a parking commission to function in such city.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4604. Public nature of parking commission. Each commission shall constitute a public body, corporate and politic, exercising public and essential governmental functions.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4605. Determination of need to create parking commission. The determination as to whether there is need for a commission to function may be made by the legislative body on its own motion or upon the filing of a petition signed by 100 residents of the city asserting that there is need for a commission to function in such city and requesting that the legislative body so declare.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4606. Resolution of need required. A city shall not transact any business or exercise any powers of this part unless and until the legislative body of the city shall by resolution declare that there is need for such city to exercise the powers of a parking commission as provided in this part.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4607. Resolution for parking commission to function. In any suit, action, or proceeding by or against or in any manner relating to a parking commission, the commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of a resolution by the legislative body declaring the need for the commission to function.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4608. Adoption of resolutions — jurisdictional area. Either or both such resolutions referred to in 7-14-4606 and 7-14-4607 may be adopted by the legislative body of a city. If both such resolutions are adopted, they shall clearly specify areas within the city, less than the whole thereof, within which or projects over which the commission and the city, respectively, are to have jurisdiction and control. The division of such jurisdiction and control shall be as so specified but may be changed from time to time by action of both the legislative body and the commission to such extent as may be consistent with obligations to bondholders assumed under this part.

History: **En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).**

7-14-4609. Appointment of commission. (1) When the legislative body of a city first adopts a resolution declaring need for a parking commission to function, the mayor, with the approval of the legislative body, shall appoint not less than five or more than seven electors of the city as members of the commission.

(2) The number of members of such commission, once established, may be changed within these limits from time to time as desired by subsequent

resolutions of the legislative body of the city. A resolution to reduce shall not require resignation of any member prior to completion of his appointed term.

History: En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).

7-14-4610. Term of office. (1) Three of the members who are first appointed shall be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two shall be designated to serve for terms of 4 years from the date of their appointment. For a seven-member commission, there shall be two additional appointments of 2 years and 3 years, respectively.

(2) Thereafter members shall be appointed as aforesaid for a term of office of 4 years, except that all vacancies occurring during a term shall be filled for the unexpired term. A member shall hold office until his successor has been appointed and has qualified.

History: En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).

7-14-4611. Removal of parking commission member. A member of a commission may be removed by the mayor with the consent of the legislative body of the city.

History: En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).

7-14-4612. Organization and operation of commission. (1) The powers of each commission shall be vested in the members thereof then in office.

(2) The appointing officer shall designate which of the members of the commission shall be the first chairman, but when the office of chairman of the commission becomes vacant thereafter, the commission shall elect a chairman from among its members. The term of office as chairman of the commission, unless otherwise prescribed by the legislative body of the city, shall be for the calendar year or for that portion thereof remaining after each such chairman is designated or elected.

(3) Members shall receive their actual and necessary expenses, including traveling expenses, and may receive such other compensation as the legislative body may prescribe.

History: En. Sec. 4, Ch. 223, L. 1951; amd. Sec. 3, Ch. 77, L. 1975; R.C.M. 1947, 11-3704(part).

7-14-4613. Funds for administrative purposes of parking commission. When any city or the commission created for it becomes authorized to transact business and exercise the powers of a parking commission, the legislative body of the city, subject to its fiscal law, may, at that time and from time to time thereafter, make an estimate of the amount of money required for administrative purposes of the commission and may appropriate such amounts to the commission as it deems necessary, subject to such conditions as the legislative body may prescribe.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(1).

7-14-4614. Annual audit of financial affairs of parking commission. The financial affairs of the parking commission shall be audited annually by independent certified public accountants.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(part).

7-14-4615. Reports on commission transactions. The legislative body shall cause:

(1) a detailed report of all transactions of the parking commission, including a statement of all revenues and expenditures, to be filed with it at quarterly, semiannual, or annual intervals as the legislative body may prescribe; and

(2) a summary statement of all its financial affairs to be published at least once annually in a newspaper of general circulation published in the city or, if none is so published, then in such newspaper of general circulation as it may deem most likely to give notice to all residents of the city.

History: En. Sec. 5, Ch. 223, L. 1951; amd. Sec. 2, Ch. 401, L. 1973; R.C.M. 1947, 11-3705(part).

7-14-4616. Termination of parking commission due to inaction — windup of commission affairs. (1) After the lapse of 4 years from the date of adoption of a resolution declaring the need for a parking commission to function in a city, if such commission shall not have acquired or entered into possession of land for a parking facility or issued bonds, the legislative body of such city may by resolution declare that there is no need for such commission in the community. Thereupon the offices of the members of the commission shall become vacant and the capacity of the commission to transact business or exercise any powers shall be suspended and shall remain suspended until the legislative body thereafter adopts a resolution declaring the need for the commission to function.

(2) After adoption of a resolution declaring there is no need for such commission to function or while any such resolution is in effect, the legislative body of a city shall have power to wind up the affairs of the commission and shall have title to all property of the commission for the purpose of offstreet parking only, to be leased to and operated by companies, individuals, or corporations.

History: En. Sec. 6, Ch. 223, L. 1951; R.C.M. 1947, 11-3706(part).

7-14-4617 through 7-14-4620 reserved.

7-14-4621. General powers of parking commission. Each parking commission, subject to the limitations imposed by this part, shall have the following powers:

(1) to sue and be sued, have a seal, make and execute contracts and other instruments necessary or convenient to the exercise of its powers;

(2) to make and from time to time amend and repeal bylaws and rules, not inconsistent with this part, to carry into effect the powers and purposes thereof;

(3) to select and appoint or remove such officers, agents, counsel, and employees, permanent and temporary, as it may require and to determine their qualifications, duties, and compensation;

(4) to exercise all or any part or combination of the powers granted in this part;

(5) to do and perform any and all other acts and things necessary, convenient, desirable, or appropriate to carry out the provisions of this part.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4622. Powers of parking commission related to provision of parking services. For the purpose of offstreet parking, each parking commission, subject to the limitations imposed by this part, shall have the following powers:

(1) to purchase, lease, obtain option upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein, together with any improvements thereon;

(2) to acquire by the exercise of the power of eminent domain any property in accordance with the applicable provisions of the law of eminent domain upon approval of the city council;

(3) to sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest therein;

(4) to lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part, of public parking facilities and public rights-of-way necessary or convenient therefor;

(5) to insure or provide for the insurance of any real or personal property or operation of the commission against risks or hazards;

(6) to acquire, construct, rent, lease, maintain, and repair such real and personal property or any portion thereof, either on behalf of the commission or as an agent of the city, including the leasing of the operation thereof;

(7) to regulate onstreet parking where it remains in use, in coordination with offstreet parking, subject to traffic regulations imposed by the state.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4623. Transfer of parking commission property to municipality. The legislative body of a city, at any time after the activation of a parking commission, may adopt by a two-thirds vote thereof a resolution transferring the property of the commission to the city. The city may, through such department as it may determine, exercise its powers in regard thereto by virtue of the constitution or this or other general law, but no such transfer shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

History: En. Sec. 6, Ch. 223, L. 1951; R.C.M. 1947, 11-3706(part).

7-14-4624. Powers of commission related to financial management. Each parking commission, subject to the limitations imposed by this part, shall have the following powers:

(1) to receive, control, and order the expenditure of any and all money and funds pertaining to parking facilities or related properties, including, without limiting the generality of this provision:

(a) all revenues derived from operations of the commission;

(b) all money appropriated or made available by the city pursuant to this section or otherwise;

(c) the proceeds of all financial aid or assistance by the city, federal, or state governments;

(d) the proceeds of levied assessments;

(e) the proceeds of all revenue bonds issued pursuant to this part by the city for parking facilities;

(2) to invest any funds held in reserve or sinking funds or any funds not required for immediate disbursement in property or securities in which cities

may legally invest funds subject to their control, but no such investment shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4625. Limitation on employment powers. The powers of the commission under 7-14-4621(3) shall be subject to all limitations and rights applicable to similar employment by the city unless the legislative body by resolution shall otherwise determine.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4626. Limitation on power of eminent domain. (1) Notwithstanding the provisions of 7-14-4622(2), no property of a state public body may be acquired without its consent.

(2) No existing parking facility shall be acquired by the exercise of the power of eminent domain by a commission or the city except after public hearing following notice of the date, time, place, and purpose of such hearing published once not less than 10 or more than 20 days prior to the date of such hearing.

History: **(1)En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; Sec. 11-3707, R.C.M. 1947; (2)En. Sec. 8, Ch. 223, L. 1951; amd. Sec. 5, Ch. 77, L. 1975; Sec. 11-3708, R.C.M. 1974; R.C.M. 1947, 11-3707(part), 11-3708.**

7-14-4627. Leasing of surplus or uneconomical space for incidental purposes. (1) Subject to the limitations imposed by this part, when in the judgment of the commission it is convenient or necessary to permit such use in order to utilize properly such land as a parking facility, each parking commission shall have power to lease for incidental commercial purposes surplus space or space which it is not economical to use for parking purposes, as an incident to the operation of any parking facility.

(2) The city or parking commission shall be prohibited from operating any such additional, secondary, and incidental facilities. Such incidental use or uses must be secondary to the primary use as a parking facility. The commission or the city shall lease such space to private operators at rates comparable to the existing market rate for similar taxable space at the location.

(3) (a) Except as provided in subsection (3)(b), if a building is erected on such property for the purpose of parking motor vehicles, then such incidental use or uses of such building shall be confined to the street level and/or below street level of such building. Such incidental use or uses at street level may occupy the entire surface area of the property less that area required for vehicular and pedestrian movement if at least two higher levels, each of equal or greater area, are devoted entirely to parking purposes.

(b) Other provisions notwithstanding, the commission or the city may lease air rights above such building.

History: **En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).**

7-14-4628. Nature of onstreet parking regulations. The parking regulations issued pursuant to 7-14-4622(7) may include, without limiting the generality of this provision, the determination of:

(1) parking locations;

(2) variable parking durations;
(3) variable parking rate schedules; and
(4) enforcement policies and procedures.

History: En. Sec. 7, Ch. 223, L. 1951; amd. Sec. 4, Ch. 77, L. 1975; R.C.M. 1947, 11-3707(part).

7-14-4629. Manner of operating parking facility. (1) The commission or city may lease any project acquired by it under the provisions of this part to the highest responsible bidder after notice.

(2) If the commission or city shall, by resolution entered upon its minutes, find and determine that the purposes of this part will not be accomplished and the public interest will not be served by lease of any particular project for operation as a private parking project, the commission may lease such project to the city or the city may operate any such project itself as a municipal parking project, subject to the ordinances and rules of the city pertaining to municipal parking projects.

History: En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955; amd. Sec. 3, Ch. 401, L. 1973; R.C.M. 1947, 11-3709(part).

7-14-4630. Notice for bids to lease parking facility. (1) The notice required by 7-14-4629(1) shall consist of the publication of a notice inviting bids, with two or more insertions thereof, not less than 5 days apart, in a newspaper of general circulation printed and published in such city or city and county. The publication shall be commenced not less than 15 days prior to the date set in the notice for the opening of bids. If there be no newspaper of general circulation printed or published therein, notice shall be given by posting copies of said notice inviting bids in at least three public places in the city or city and county not less than 15 days prior to the date set in the notice for the opening of bids.

(2) Such notice shall distinctly and specifically describe the project and the facilities in connection therewith which are to be leased, the period of time for which said project is to be leased, and the minimum rental to be paid under such lease.

History: En. Sec. 9, Ch. 223, L. 1951; amd. Sec. 3, Ch. 127, L. 1955; amd. Sec. 3, Ch. 401, L. 1973; R.C.M. 1947, 11-3709(part).

7-14-4631. Compliance with land-use laws required. (1) All parking facilities of a commission shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the parking facility is situated.

(2) In the planning and location of any parking facility, a commission shall be subject to the relationship of the facility to any master plan or sections of a master plan for the development of the area in which the commission functions.

History: En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part).

7-14-4632. Cooperation with other municipal offices. In order that there may be no unnecessary duplication of effort or expense, the commission shall have access, for the purposes of the commission, to the services and facilities of the city planning department, the city engineer, the police department, the fire department, and such other departments and offices of the city as may be appropriate therefor.

History: En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part).

7-14-4633. Municipality authorized to collect in-lieu payments from parking commission — limitations. The legislative body may by resolution provide for a sum to be paid annually by the commission to the city. This sum shall not exceed the amount the commission would be required to pay in ad valorem taxes if it were a private entity owning the same property and shall not be paid from any funds needed for current operation, maintenance, debt service, or repairs or for compliance with any other provisions of indentures securing obligations of the commission.

History: En. Sec. 10, Ch. 223, L. 1951; amd. Sec. 4, Ch. 401, L. 1973; R.C.M. 1947, 11-3710(part).

7-14-4634. Charges for use of parking facilities. (1) The commission shall fix the rates, fees, and all other charges to be made for all projects, services, or facilities furnished, acquired, constructed, or completed under this part for the use thereof by any persons or public or private agencies utilizing such projects, services, or facilities. Subject to such contractual obligations as may be entered into by the commission and the holders of the revenue bonds issued under this part, the commission is authorized to change such rates, charges, and fees from time to time as conditions warrant.

(2) All rates, fees, and charges shall be at all times fixed to yield annual revenue which together with other revenue shall be equal to annual operating and maintenance expenses, including insurance costs, and all redemption payments and interest charges on the revenue bonds at any time issued and outstanding in connection with the project of which such facilities are a part as the same become due.

(3) The commission may provide that the rates, fees, and charges established are minimum rates, fees, and charges and subject to increase or decrease in accordance only with the terms of the indenture under which the revenue bonds were issued.

History: En. Sec. 22, Ch. 223, L. 1951; R.C.M. 1947, 11-3722(part).

7-14-4635. Authority to establish lien on charges for payment of bonds. The commission may provide that bond redemption and the interest payment shall constitute a first, direct, and exclusive charge and lien on all such fees, charges, and other revenues and interest thereon and sinking funds created therefrom received from the use and operation of the project for the acquisition, construction, or completion of which such revenue bonds were issued. All such fees and charges and other revenues, together with the interest thereon, shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose so long as such bonds (or any of them) are outstanding and unpaid.

History: En. Sec. 22, Ch. 223, L. 1951; R.C.M. 1947, 11-3722(part).

7-14-4636 through 7-14-4640 reserved.

7-14-4641. Authority to issue revenue bonds. The commission shall have power to issue revenue bonds in its name or in that of the city.

History: En. Sec. 11, Ch. 223, L. 1951; amd. Sec. 5, Ch. 401, L. 1973; R.C.M. 1947, 11-3711(part).

7-14-4642. Election required to issue revenue bonds. (1) The power to issue revenue bonds as provided in this part shall not be operative in any city until the legislative body, either at a general or a special election, shall submit to the electors the question as to whether the legislative body, the commission, or both, shall be authorized to adopt the revenue bond method of financing projects provided for herein.

(2) Such question may be placed before the electors and notice thereof given in the same manner as provided by law for referring ordinances of the city to the electors. The qualifications of electors shall be the same as those required for voting at municipal elections in the city for elective officers thereof. The provisions relating to the qualifications of electors and manner of submission of the question to the electors for the purposes of this part shall govern and be controlling, any provision of law to the contrary notwithstanding.

History: En. Sec. 3, Ch. 223, L. 1951; amd. Sec. 2, Ch. 127, L. 1955; R.C.M. 1947, 11-3703(part).

7-14-4643. Sources of revenue for payment of revenue bonds. (1) No revenue bonds authorized by 7-14-4641 or the interest thereon shall be payable from or secured by a pledge or mortgage of any funds or properties of the city except those expressly enumerated in subsection (2).

(2) A commission may issue such types of revenue bonds as it may determine, including revenue bonds on which the principal and interest are payable:

(a) exclusively from the income and revenues of the parking facilities financed with the proceeds of such bonds;

(b) exclusively from the income and revenues of certain designated parking facilities whether or not they were financed in whole or in part with the proceeds of such bonds;

(c) from a charge on such revenues either prior or subordinate to the payment of any designated part or all of the costs of operation and maintenance and other expenses of such facilities;

(d) from any contributions or other financial assistance from the state or federal governments;

(e) from any or all onstreet parking meter revenues of the city which may be pledged and appropriated by or under authority of the legislative body for this purpose until the bonds are fully paid;

(f) from the collections of special assessments and interest thereon levied to finance the cost of parking facilities under any of the provisions of parts 41 through 45 of chapter 12 and part 47 of this chapter which may be pledged and appropriated by or under authority of the legislative body for the payment of revenue bonds issued under the provisions of this section and are not pledged for the payment of special improvement district bonds;

(g) from a reserve which may be established and agreed to be maintained by the transfer of such other city funds as may be pledged and appropriated, by or under authority of the legislative body, to meet deficiencies in the reserve until the bonds are fully paid;

(h) from the proceeds of sale upon foreclosure of any mortgage of an offstreet parking facility made by or under authority of the legislative body to secure the payment of any revenue bonds issued under this section, provided that no such mortgage shall be placed upon any property of the city or commission unless the cost of such property to the city has been paid from the proceeds of such bonds; or

(i) any combination of these sources.

History: **(1)En. Sec. 11, Ch. 223, L. 1951; amd. Sec. 5, Ch. 401, L. 1973; Sec. 11-3711, R.C.M. 1947; (2)En. Sec. 12, Ch. 223, L. 1951; amd. Sec. 6, Ch. 401, L. 1973; Sec. 11-3712, R.C.M. 1947; R.C.M. 1947, 11-3711(part), 11-3712(part).**

7-14-4644. Restrictions on use of reserve to make payments on revenue bonds. The funds from which the transfers authorized by 7-14-4643(2)(g) are made shall be reimbursed from the next collections of other revenues enumerated in 7-14-4643 which are not needed for full compliance with provisions of indentures securing all outstanding obligations of the commission. Nothing herein shall permit the levy of taxes at any time in excess of the deficiency then existing in the reserve, but such tax as may be needed, with other funds determined by the legislative body to be available to meet the deficiency, may and shall be levied and shall not be subject to any limitation of rate or amount provided in any other law.

History: **En. Sec. 12, Ch. 223, L. 1951; amd. Sec. 6, Ch. 401, L. 1973; R.C.M. 1947, 11-3712(part).**

7-14-4645. Power to determine terms and conditions of revenue bonds. (1) Each commission shall have power to determine by resolution, with reference to each issue of revenue bonds to be issued under this part, all the terms and conditions of such bonds and of the sale and issuance thereof and any and all matters necessary or appropriate to be determined in connection therewith, except only as such power is limited by or under the authority of express provisions of this part.

(2) Without excluding the exercising of any other powers under or in any way limiting the generality of the preceding general grant of power or in any way excluding or limiting the exercising of any or all other powers granted by this part, the general power granted by this section shall include and each such commission shall have and in its discretion may exercise the specific powers provided by this part.

History: **En. Sec. 13, Ch. 223, L. 1951; R.C.M. 1947, 11-3713.**

7-14-4646. Series or divisions of bonds permitted. (1) The commission may issue revenue bonds in series or may divide any issue into one or two or more divisions and fix different maturities or dates of such bonds, fix different rates of interest, or prescribe different terms and conditions for the bonds of the several series or divisions.

(2) It is not necessary that all bonds of the same authorized issue be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be provided for by the commission at or prior to the issue thereof.

(3) The commission may provide for successive issues or may provide for one maximum issue.

History: **En. Sec. 16, Ch. 223, L. 1951; R.C.M. 1947, 11-3716.**

7-14-4647. Interest on revenue bonds. Revenue bonds shall bear interest, payable annually or semiannually or in part annually and in part semiannually. Prior to the issuance of bonds, the commission may fix limitations or restrictions on the payment of interest.

History: **En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).**

7-14-4648. Payment of principal and interest. The commission may provide for the payment of the principal and interest of bonds at any place within or without the state in specified coin or currency of the United States.

History: **En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).**

7-14-4649. Maturity dates of revenue bonds. (1) Bonds may be serial bonds or sinking fund bonds, with such maturities as the commission may determine.

(2) Bonds shall bear dates prescribed by the commission. No bond by its terms shall mature in more than 40 years from its own date, and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

History: **En. Sec. 19, Ch. 223, L. 1951; R.C.M. 1947, 11-3719.**

7-14-4650. Signatures on bonds. All of the signatures on said bonds and on the interest coupons thereof may be printed, lithographed, or engraved facsimiles except one signature of an officer of the city or commission or a representative of the trustee, which shall be manually affixed. If any of the officers whose signatures appear upon the bonds or coupons cease to be officers before delivery of the bonds or coupons, their signatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

History: **En. Sec. 18, Ch. 223, L. 1951; amd. Sec. 7, Ch. 401, L. 1973; R.C.M. 1947, 11-3718.**

7-14-4651. Redemption of revenue bonds. Bonds may be callable upon such terms and conditions, upon such notice as the commission may determine, and upon the payment of the premium fixed by the commission in the proceedings for the issuance of the bonds. No bond is subject to call or redemption prior to its fixed maturity date unless the right to exercise such call is expressly stated on the face of the bond.

History: **En. Sec. 17, Ch. 223, L. 1951; amd. Sec. 20, Ch. 234, L. 1971; R.C.M. 1947, 11-3717(part).**

7-14-4652. Details relating to sale of revenue bonds. (1) The commission may fix terms and conditions for the public or private sale or other disposition of any authorized issue of bonds. The commission may sell bonds at not less than 95% of their par or face value.

(2) Interest on bonds may be paid out of the proceeds of the sale of the bonds during the actual construction of any project for the acquisition, construction, or completion of which the bonds have been issued and for a period of not to exceed 2 years thereafter, as provided for in the indenture.

History: **En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).**

7-14-4653. Temporary or interim bonds. Pending the actual issuance or delivery of revenue bonds, the commission may issue temporary or interim bonds, certificates, or receipts of any denomination whatsoever, with or without coupons, to be exchanged for definitive bonds when ready for delivery or to be paid at or before maturity, with accrued interest, from the proceeds of the definitive bonds.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4654. Exemption from certain state taxes. All such revenue bonds and the interest or income therefrom are exempt from all taxation in this state, other than gift, inheritance, and estate taxes.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4655. Authorization to enter into indentures. (1) The commission may enter into indentures providing for the aggregate principal amount, date or dates, maturities, interest rate, denominations, form, registration, transfer, and interchange of such bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded, and refunded.

(2) Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to and is bound by all of the provisions of the indenture to the extent that such provisions do not conflict with provisions stated in the bonds.

(3) Reference on the face of the bonds to such indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof into the body of the bonds and their appurtenant coupons.

History: En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 264, L. 1963; R.C.M. 1947, 11-3714(part).

7-14-4656. Contents of indenture. (1) An indenture pursuant to which bonds are issued may include such covenants and agreements on the part of the commission as the commission deems necessary or advisable for the better security of the bonds issued thereunder.

(2) An indenture may include any or all the following clauses relating to the bonds issued thereunder:

(a) requiring the commission to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates, at the place or places, and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture;

(b) requiring the commission to make all repairs, renewals, and replacements necessary to the operation of the project and to keep it at all times in good repair;

(c) requiring the commission to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights;

(d) requiring the commission to pay and discharge or cause to be paid and discharged from the funds available for that purpose all lawful claims for labor, materials, and supplies or other charges which if unpaid might become a lien or charge upon the revenues or any part thereof of any project acquired, constructed, or completed from the proceeds of the sale of the bonds or from other proceeds or upon any of the physical properties thereof which might impair the security of the bonds;

(e) limiting, restricting, or prohibiting any right, power, or privilege of the commission to mortgage or otherwise encumber, sell, lease, or dispose of any project constructed from the proceeds of the bonds or from other proceeds or to enter into any lease or agreement which impairs or impedes the operation of such project or any part thereof necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to such revenues;

(f) requiring the commission to fix, prescribe, and collect fees, tolls, rentals, or other charges in connection with the services and facilities furnished from the project acquired, constructed, or purchased from part or all of the proceeds of the bonds or from other proceeds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with all expenses of operation, maintenance and repair of the project, and with such additional sums as may be required for any sinking fund, reserve fund, or other special fund provided for the further security of such bonds or as a depreciation charge or other charge in connection with such project;

(g) requiring the commission to hold in trust the revenues pledged to the payment of such bonds and the interest thereon or to any reserve or other fund created for the further protection of the bonds and to apply such revenues or cause them to be applied only as provided in the indenture;

(h) limiting the power of the commission to apply the proceeds of the sale of any issue of bonds for the acquiring, constructing, or completing of any project or any part thereof or more than one of such projects;

(i) limiting the power of the commission to issue additional revenue bonds for the purpose of acquiring, constructing, or completing any improvement or any part thereof;

(j) requiring, specifying, or limiting the kind, amount, and character of insurance to be maintained by the commission on any project or any part thereof and the use and disposition of the proceeds of any such insurance thereafter collected;

(k) providing the events of default and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity and the terms and conditions upon which such declaration and its consequences may be waived;

(l) designating the rights, limitations, powers, and duties arising upon breach by the commission of any of the covenants, conditions, or obligations contained in any indenture;

(m) prescribing a procedure by which certain specified terms and conditions of the indenture may be subsequently amended or modified with the consent of the commission and the vote or written assent of the holders of a specified principal amount of the bonds issued and outstanding;

(n) providing for such other acts and matters as may be necessary or convenient or desirable in order to secure the bonds or to make the bonds more marketable.

History: (1), (2)(a) thru (2)(m)En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 164, L. 1963; Sec. 11-3714, R.C.M. 1947; (2)(n)En. Sec. 15, Ch. 223, L. 1951; Sec. 11-3715, R.C.M. 1947; R.C.M. 1947, 11-3714(part), 11-3715(part).

7-14-4657. Special provisions relating to indenture clause dealing with amendment and modification. (1) With respect to any clause providing for the modification or amendment of an indenture, the commission may agree that bonds held by the commission; by any department, political subdivision, or agency of the state; or by any public corporation, municipality, district, or political subdivision shall not be counted as outstanding bonds or be entitled to vote or assent but shall, nevertheless, be subject to any such modification or amendment.

(2) Such clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

History: En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 264, L. 1963; R.C.M. 1947, 11-3714(part).

7-14-4658. Incorporation by reference of indenture in all contracts. Every contract entered into by the commission for the use of any project or the services or facilities thereof acquired, constructed, or completed from the proceeds of the sale of revenue bonds shall incorporate by reference the provisions of any indenture pursuant to which the bonds were issued.

History: En. Sec. 23, Ch. 223, L. 1951; amd. Sec. 9, Ch. 401, L. 1973; R.C.M. 1947, 11-3723(part).

7-14-4659. Funding and refunding bonds authorized. (1) The commission may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any revenue bonds issued by the commission. Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be funded or refunded thereby and, in addition, for the payment of all expenses incident to the calling, retiring, or paying of such outstanding bonds and the issuance of such funding or refunding bonds.

(2) All provisions of this part applicable to the issuance of revenue bonds are applicable to the funding or refunding bonds and to the issuance, sale, or exchange thereof.

History: Ap. p. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; Sec. 11-3720, R.C.M. 1947; Ap. p. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; Sec. 11-3721, R.C.M. 1947; R.C.M. 1947, 11-3720(part), 11-3721(part).

7-14-4660. Expenses which may be paid by means of funding or refunding bonds. The expenses referred to in 7-14-4659(1) include:

(1) the difference in amount between the par value of the funding or refunding bonds and any amount less than par for which the funding or refunding bonds are sold;

(2) any amount necessary to be made available for the payment of interest upon such funding or refunding bonds from the date of sale thereof to date of payment of the bonds to be funded or refunded or to the date upon which the bonds to be funded or refunded will be paid pursuant to the call thereof or agreement with the holders thereof; and

(3) the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement.

History: En. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; R.C.M. 1947, 11-3721(part).

7-14-4661. Bonds to be negotiable. All bonds issued under the provisions of this part shall be fully negotiable as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963; R.C.M. 1947, 11-3721(part).

7-14-4662. Bonds as legal investments. All bonds issued under this part shall be legal investments for both public and private funds.

History: En. Sec. 20, Ch. 223, L. 1951; amd. Sec. 8, Ch. 401, L. 1973; R.C.M. 1947, 11-3720(part).

7-14-4663. Authorization to designate trustee for bondholders. The commission may designate a bank or trust company as a trustee for the holders of bonds issued hereunder, may authorize the trustee to act on behalf of the holders of the bonds and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders, and may fix and determine the conditions upon which any trustee shall receive, hold, or disburse any or all revenues collected for or on account of the bondholders. The authority may prescribe the duties and powers of such trustee with respect to the payment of principal and interest on the bonds, the redemption of the bonds, the registration and discharge from registration of the bonds, and the management of any sinking fund or other funds provided as security for the bonds.

History: En. Sec. 15, Ch. 223, L. 1951; R.C.M. 1947, 11-3715(part).

7-14-4664. Rights of obligees. (1) An obligee of a commission shall have the right in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(a) by mandamus, suit, action, or proceeding at law or in equity to compel said commission and the members, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of said commission with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of said commission and the fulfillment of all duties imposed upon said commission by this part;

(b) by suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of said commission.

(2) A commission shall have power by its resolution, trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds the right (in addition to all rights that may otherwise be conferred), upon the happening of an event or default as defined in such resolution or instrument, by suit, action, or proceeding in any court of competent jurisdiction:

(a) to cause possession of any parking facility or any part thereof to be surrendered to any such obligee;

(b) to obtain the appointment of a receiver of any parking facility of said commission or any part thereof and of the rents and profits therefrom;

(c) to require said commission and the members and employees thereof to account as if it and they were the trustees of an express trust.

History: (1)En. Sec. 23, Ch. 223, L. 1951; amd. Sec. 9, Ch. 401, L. 1973; Sec. 11-3723, R.C.M. 1947; (2)En. Sec. 24, Ch. 223, L. 1951; Sec. 11-3724, R.C.M. 1947; R.C.M. 1947, 11-3723(part), 11-3724(part).

7-14-4665. Role of appointed receiver. If a receiver is appointed pursuant to 7-14-4664(2)(b), he may enter and take possession of such parking facility or any part thereof and operate and maintain the same and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom. The receiver shall keep such money in a separate account or accounts and apply the same in accordance with the obligations of said commission as the court shall direct.

History: En. Sec. 24, Ch. 223, L. 1951; R.C.M. 1947, 11-3724(part).

7-14-4666. Exemption from execution for property of parking commission — exception. (1) Except as provided in subsection (2), all real property of a commission shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same, nor shall any judgment against a commission be a charge or lien upon its real property.

(2) The provisions of this section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust, or other encumbrance of a commission or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by a commission on its rents, fees, or revenues.

History: En. Sec. 25, Ch. 223, L. 1951; R.C.M. 1947, 11-3725.

Part 47

Pedestrian Malls and Offstreet Parking Facilities

7-14-4701. Authority to establish pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may establish pedestrian malls.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4702. Control of traffic on pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may prohibit, in whole or in part, vehicular traffic on a pedestrian mall.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4703. Provision for payment of damages due to creation of pedestrian mall. When the public interest or convenience requires, the governing body of a municipality may pay, from general funds of the municipality or other available money or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall. The resolution of intention must contain a statement that an assessment will be levied to pay the whole or a stated portion of such damages, if any, allowed or awarded to any property owner by reason of the establishment of such pedestrian mall.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4704. Construction of improvements related to pedestrian malls. When the public interest or convenience requires, the governing body of a municipality may construct improvements on public streets that have been or will be established as a pedestrian mall, including but not limited to paving, sidewalks, curbs, sewers, covered walkways or areas, air conditioning, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, statuary, fountains, decorative structures, benches, restrooms, child care facilities, display facilities, information booths, public assembly facilities, and other structures, works, or improvements necessary or convenient to serve members of the public using such pedestrian mall, including the reconstruction or relocation of existing municipally owned works, improvements, or facilities on such streets. The improvements or structures may be attached to abutting private buildings or structures provided that the improvements or structures are located on public property.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(part).

7-14-4705 through 7-14-4710 reserved.

7-14-4711. Authorization for improvement districts for pedestrian malls, offstreet parking, parkings, and parkways. (1) An improvement district may be formed for the sole purpose of operating, maintaining, repairing, and improving pedestrian malls, offstreet parking facilities, and parkings and parkways.

(2) Subject to the powers granted and the limitations contained in this part, the powers and duties of the municipality and the procedure to be followed are as provided in parts 41 through 44 of chapter 12 for other types of special improvement districts.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(3), (4).

7-14-4712. Procedure upon receipt of petition from all property owners within proposed district. If a petition for the formation of an improvement district under the provisions of 7-14-4711 is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of the fact, shall adopt a resolution of intention to order the improvement as provided in 7-12-4104, and 7-12-4117 and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to the following provisions without the necessity of the publication and posting of the resolution of intention provided for in 7-12-4106.

History: En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(5).

7-14-4713. Estimates of expenses — tax levy. (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district which shall be provided for by the levy and collection of ad valorem taxes upon the taxable value of all the real and personal property in the district;

(b) publish notice thereof; and

(c) have hearings on the statements and estimates and adopt them as provided for incorporated cities and towns by 7-12-4104, 7-12-4106, 7-12-4110, 7-12-4112, 7-12-4113, and 7-12-4117.

(2) The governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, shall be applicable to the district taxes provided for under this section.

History: **En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(6).**

7-14-4714. Manner of financing district for pedestrian mall or offstreet parking. An improvement district formed for the purpose of establishing a pedestrian mall or offstreet parking may be financed in accordance with the provisions of 7-12-4161 through 7-12-4168, 7-12-4173, and 7-12-4175 and in accordance with the methods of financing set forth for the construction of water or sewer systems as set forth in 7-13-4321 through 7-13-4324, 7-13-4328, 7-13-4329, and 7-13-4341 through 7-13-4345.

History: **En. Sec. 1, Ch. 89, L. 1913; re-en. Sec. 5225, R.C.M. 1921; re-en. Sec. 5225, R.C.M. 1935; amd. Sec. 1, Ch. 136, L. 1967; amd. Ch. 280, L. 1971; amd. Sec. 28, Ch. 566, L. 1977; R.C.M. 1947, 11-2201(7).**

7-14-4715. Authorization for issuance of bonds by improvement districts for pedestrian malls or offstreet parking. An improvement district formed for pedestrian malls or offstreet parking shall be authorized to issue improvement bonds.

History: **En. 11-2214.1 by Sec. 2, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.1(part).**

7-14-4716. Procedure to issue bonds. (1) When the governing body determines that improvement bonds are to be issued, it shall so declare in the resolution of intention for the work and shall specify the rate of interest which the bonds will bear. A description of the bonds, including the manner of repayment, shall be inserted in all notices of the proceedings required to be published or posted. A like description of the bonds shall be included in the warrant.

(2) All other proceedings for the work up to and including the approval of the assessment by the governing body and including delivery of the assessment to the contractor, demand of payment of the several assessments, and the return and record thereof shall be in all respects as provided in this part and parts 41 and 42 of chapter 12.

History: **En. 11-2214.1 by Sec. 2, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.1(a), (b); amd. Sec. 13, Ch. 253, L. 1979.**

7-14-4717. List of unpaid assessments. After expiration of the prescribed time from the date of the warrant and after the treasurer has recorded the return, he shall make and certify to the clerk a complete list of all unpaid assessments which amount to $25 or over upon any assessment.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(a).

7-14-4718. Removal of property from list. (1) If any person before certification of the list to the clerk presents to the treasurer his affidavit that he is the owner of a lot in the list, accompanied by the certificate of a searcher of records that the person is the owner of record, and notifies the treasurer in writing that he desires no bond to be issued for the assessment upon the lot, then the assessment shall not be included in the list and shall remain collectable as provided by this part and parts 41 and 42 of chapter 12.

(2) Omission to file the notice shall bar any defense against the bonds except the defense that the governing body did not have authority to issue the bonds.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(b).

7-14-4719. Presentation of list to governing body — issuance of bonds. The clerk shall present the list to the governing body at its next meeting, and the body shall thereupon by resolution direct improvement bonds to be issued to the contractor for the amount of the assessments remaining unpaid, prescribing the number and denomination of the bonds and the times when payable. The resolution shall also fix the place, if any, other than the office of the treasurer at which the bonds and the interest thereon shall be payable.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(part).

7-14-4720. Details of bonds. (1) The number and denomination of the bonds and the times when payable shall be fixed so that an approximately equal amount of the total sum shall be paid each year until the whole amount is paid, not exceeding 25 years and 3 months from the date of the bonds, but any fractional amounts may be added to the amount due in any year so that the amounts due in all other years shall be in equal multiples of $100 each. Except for a bond to represent any odd amount due in any year, the denominations of the bonds shall be fixed at $100 or some multiple thereof not exceeding $1,000.

(2) The bonds shall be issued as of the date of the warrant and shall bear interest from such date at the rate specified in the resolution of intention. They shall have semiannual interest coupons attached, the first of which shall be payable on January 1 or July 1, as the case may be, occurring 90 days after the date of the bond and shall be for the interest accrued at that time.

(3) The due date of all bonds shall be January 1 in the years in which they respectively become due.

History: En. 11-2214.2 by Sec. 3, Ch. 136, L. 1967; amd. Sec. 14, Ch. 234, L. 1971; R.C.M. 1947, 11-2214.2(part).

7-14-4721. Assessments converted to bond liability. (1) The treasurer, at the time he certifies the list of unpaid assessments to the clerk, shall write the word "certified" on the record of the assessment opposite each assessment included in the list, and thereupon all assessments of $25 or over shall cease to be payable in cash and shall thereafter be payable only in equal annual installments on December 1 in each year preceding January 1 on which the bonds become due. The governing body may provide a plan whereby the annual installment may be collected in partial payments prior to the time the installment is due, and the lien of each assessment on the property assessed shall continue and remain in full force and effect for 2 years after the last installment on the assessment becomes due or until the assessment is fully paid.

(2) The number of installments in which the assessment is payable shall correspond to the number of years in which there are bonds to be paid, but the total number of installments shall not exceed 25.

History: **En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(a), (c).**

7-14-4722. Treatment of installments due on bonds. (1) An uncollected installment shall be added to the succeeding installment and, together with interest and penalties, shall be payable therewith.

(2) All assessments of $25 or more not paid before the certification of assessments unpaid to the clerk shall bear interest from the date of the warrant at the same rate as that specified for the bonds in the resolution of intention. The interest shall be payable on June 1 and December 1 of each year immediately before the interest becomes due on the bonds, but the governing body may provide a plan whereby the interest may be collected in partial payments prior to the date it becomes due.

History: **En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(b), (d).**

7-14-4723. Advance payment of installments. The governing body may provide for receiving payment of the installments of the assessment before they become due and using the proceeds thereof in redeeming such bonds as may be presented for redemption by the owners thereof or for investing the proceeds in improvement bonds for other work or other satisfactory investment, but no investment of such funds shall be made so as to prejudice the prompt payment of the bonds on the date they become due.

History: **En. 11-2214.3 by Sec. 4, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.3(e).**

7-14-4724 through 7-14-4730 reserved.

7-14-4731. Authorization for improvement districts to lease and operate offstreet parking facilities. (1) In addition to the purposes for which an improvement district may be formed under the provisions of 7-12-4301, 7-14-4701, and 7-14-4711, an improvement district may be formed for the sole purpose of leasing real property to be used as offstreet parking sites; for the improvement of such offstreet parking sites by grading, paving, ordering the installation of lighting poles, wires, conduits, lamps, standards, and other appliances for the purpose of lighting and beautifying the offstreet parking areas and entrances thereto; and for the operation and maintenance thereof.

(2) Subject to the powers granted and the limitations contained in this section, 7-12-4131, 7-12-4301(2), 7-12-4327, 7-14-4701 through 7-14-4704,

7-14-4711 through 7-14-4714, and 7-14-4733 through 7-14-4737, the powers and duties of the governing body of the municipality and the procedure to be followed shall be as provided in parts 41 and 42 of chapter 12 for other types of special improvement districts.

(3) No improvement district formed under provisions of this section shall be authorized to engage in any activity other than the leasing of offstreet parking sites and the improvement, operation, and maintenance of same.

(4) The formation of an improvement district for offstreet parking purposes under the provisions of this section shall not prevent the subsequent establishment of improvement districts for any other purpose authorized by law.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part).

7-14-4732. Procedure upon receipt of petition for creation of offstreet parking district. (1) If a petition for the formation of an improvement district for the leasing, improvement, or operation and maintenance of an offstreet parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying such ownership and making a finding of such fact, shall adopt a resolution of intention to order the improvement pursuant to the provisions of 7-12-4104 and 7-12-4117 and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to provisions of 7-12-4114 without the necessity of the publication and posting of the resolution of intention provided for in 7-12-4106.

(2) If a petition for the formation of an improvement district for offstreet parking purposes and for the leasing of sites and improvement, operation, and maintenance thereof is presented to the governing body signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district, the governing body shall adopt a resolution of intention ordering the proposed improvement and cause same to be published and posted pursuant to the provisions of 7-12-4104 and 7-12-4106.

History: En. 11-2214.5 by Sec. 6, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.5.

7-14-4733. Authority to enter lease agreements. (1) After the formation of a special improvement district pursuant to the provisions of 7-12-4104 and 7-12-4106 as modified in 7-14-4732 and after having acquired jurisdiction to order the improvement pursuant to 7-12-4114, the governing body may:

(a) in addition to ordering the improvements set forth in 7-14-4731(1), enter into lease agreements for property within the limits of the assessment district for use as offstreet parking sites, which lease agreements shall be upon such terms and conditions as the governing body may determine and which lease agreements may provide that same may be terminated by either party upon 6 months' prior written notice; and

(b) contract for the operation and maintenance thereof.

(2) The governing body may enter into such lease agreements and contract for the operation and maintenance of such offstreet parking sites without the publication of notice and invitation for bids.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(c).

7-14-4734. Expense estimate — assessments and tax levy. (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district which shall be provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district;

(b) publish notice thereof; and

(c) have hearings thereon and adopt an ordinance thereon at the times and in the manner provided for incorporated cities and towns by the applicable portions of 7-12-4175.

(2) The governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the district taxes provided for under this section.

(3) No assessment for district purposes against the property within such district may exceed 12 mills upon each dollar of taxable valuation in any tax year.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part); amd. Sec. 14, Ch. 253, L. 1979.

7-14-4735. Prohibition on issuance of improvement bonds. An improvement district formed under provisions of 7-14-4731 shall not be authorized to issue improvement bonds.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part).

7-14-4736. Participation by municipality. If the municipality is willing to participate in the cost of leasing, improving, operating, or maintaining the offstreet parking sites in an improvement district established pursuant to 7-14-4731, the governing body may by resolution summarily order such participation, and the amount of any such participation shall not be subject to the limitations of 7-12-4102, 7-12-4103, and 7-12-4132.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(part).

7-14-4737. Deletion of territory from offstreet parking district. If in the opinion of the governing body any portion of the territory of a district formed under 7-14-4731 is no longer benefited by the offstreet parking sites provided, the governing body may by resolution summarily delete from the district formed under 7-14-4731 any such area and may form a new district from the balance of the original district formed under 7-14-4731.

History: En. 11-2214.4 by Sec. 5, Ch. 136, L. 1967; R.C.M. 1947, 11-2214.4(h).

Part 48

Air Transportation

7-14-4801. Acquisition of landing fields and parking areas for aircraft. The city or town council has power to acquire by lease, gift, purchase, or condemnation lots or lands for landing fields or parking areas for aircraft, within or without the corporate limits of the municipality, and to exercise municipal jurisdiction over the lots or lands, where such lots or lands or any portion thereof are without the corporate limits of the municipality, to the same extent as though they were within such corporate limits.

History: **En. Subd. 84, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.83, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1947; amd. Sec. 1, Ch. 27, L. 1965; R.C.M. 1947, 11-986(part).**

CHAPTER 15

HOUSING AND CONSTRUCTION

Parts 1 through 20 reserved

Part 21 — County Housing Authorities

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7-15-2101. Findings and policy.
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7-15-2103. Notice of hearing on petition.
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7-15-2105. Decision of board of county commissioners.
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7-15-2107. Application for incorporation.
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Part 42 — Urban Renewal

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7-15-4204. Interpretation.

7-15-4205. Scope.
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Part 44 — Municipal Housing Authorities

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Parts 1 through 20 reserved

Part 21

County Housing Authorities

7-15-2101. Findings and policy. It is hereby declared that:

(1) unsanitary or unsafe dwelling accommodations exist in rural areas throughout the state, and such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor conditions of buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(2) in such rural areas, many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations;

(3) in such rural areas, there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof, and consequently, many

persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(4) these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state and impair economic values;

(5) these conditions cannot be remedied by the ordinary operations of private enterprise;

(6) the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired;

(7) it is in the public interest that work on such projects be instituted as soon as possible; and

(8) the necessity for the provisions hereinafter enacted is hereby declared, as a matter of legislative determination, to be in the public interest.

History: En. Sec. 2, Ch. 140, L. 1935; re-en. Sec. 5309.2, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1941; R.C.M. 1947, 35-102(part).

7-15-2102. Petition to create county housing authority — hearing and notice. (1) Any 25 residents of a county may file a petition with the county clerk setting forth that there is a need for a housing authority to function in the county.

(2) Upon the filing of such a petition, the county clerk shall give notice of the time, place, and purpose of a public hearing at which the board of county commissioners will determine the need for an authority in the county.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2103. Notice of hearing on petition. The notice required by 7-15-2102 shall be given at the county's expense by publishing a notice at least 10 days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the county or, if there be no such newspaper, by posting such a notice in at least three public places within the county at least 10 days preceding the day on which the hearing is to be held.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2104. Hearing on petition. Upon the date fixed for said hearing held upon notice as provided in 7-15-2102 and 7-15-2103, an opportunity to be heard shall be granted to all residents and taxpayers of the county and to all other interested persons.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2105. Decision of board of county commissioners. (1) After such a hearing, the board of county commissioners shall determine:

(a) whether unsanitary or unsafe inhabited dwelling accommodations exist in the county; and/or

(b) whether there is a lack of safe or sanitary dwelling accommodations in the county available for all the inhabitants thereof.

(2) If it shall determine that either or both of the above-enumerated conditions exist, the board shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority.

(3) If the board, after a hearing as aforesaid, shall determine that neither of the above-enumerated conditions exist, it shall adopt a resolution denying the petition. After 3 months shall have expired from the date of the denial of any such petition, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2106. Criteria for determining if unsafe or unsanitary dwelling accommodations exist. In determining whether dwelling accommodations are unsafe or unsanitary, the board of county commissioners shall take into consideration the following:

(1) the physical condition and age of the buildings;

(2) the degree of overcrowding;

(3) the percentage of land coverage;

(4) the light and air available to the inhabitants of such dwelling accommodations;

(5) the size and arrangement of the rooms;

(6) the sanitary facilities; and

(7) the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2107. Application for incorporation. (1) The commissioners of the authority shall present to the secretary of state an application signed by them which shall set forth (without any detail other than the mere recital):

(a) that a notice has been given and public hearing has been held as aforesaid and that the board of county commissioners made the aforesaid determination after such hearing and appointed them as commissioners;

(b) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;

(d) the name which is proposed for the corporation; and

(e) the location of the principal office of the proposed corporation.

(2) The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application and that each subscribed and swore thereto in the officer's presence.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2108. Processing of application by secretary of state. (1) The secretary of state shall examine the application, and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the same with the application.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2109. Effect of filing and recording application. When the application has been made, filed, and recorded as provided in 7-15-2107 and 7-15-2108, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2110. Presumption of regularity in creation of county housing authority. (1) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part upon proof of the issuance of the aforesaid certificate by the secretary of state.

(2) A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(7).

7-15-2111. Area of operation of county housing authority — inclusion of municipalities. (1) The area of operation of such authority shall include said county, but in no event shall it include any city unless a resolution shall have been adopted by the governing body of the city (and by any authority which shall have been theretofore established and authorized to exercise its powers in the city) declaring that there is need for the county authority to exercise its powers within that city. Such resolution shall not be effective until it has been approved by a majority vote of the electors within the corporate limits of such city or town voting at either a special or general election.

(2) If, after the adoption of such resolution or resolutions, an authority is established for any city within the county, the county authority shall have no power to initiate any further housing projects within such city without the consent by resolution of the governing body thereof and of the authority established for such city.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27A, R.C.M. 1935; amd. Sec. 1, Ch. 281, L. 1971; R.C.M. 1947, 35-128(part).

7-15-2112. Administration and operation of county housing authority — application of municipal laws. (1) The commissioners of a housing authority created for a county may be appointed and removed by the board of county commissioners of the county in the same manner as the commissioners of a housing authority created for a city may be appointed and removed by the mayor.

(2) Except as otherwise provided in this part, each housing authority created for a county and the commissioners thereof shall have the same functions, rights, powers, duties, and limitations provided for housing authorities created for cities and the commissioners of such housing authorities, and for such purposes, unless a different meaning clearly appears from the context:

(a) the term "mayor" or "council" as used in the housing authorities law and any amendments thereto shall be construed as meaning "board of county commissioners";

(b) the term "city clerk" as used therein shall be construed as meaning "county clerk";

(c) the term "city" as used therein shall be construed as meaning "county"; and

(d) the term "ordinance" shall be construed as meaning "resolution".

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27B, R.C.M. 1935; amd. Sec. 2, Ch. 281, L. 1971; amd. Sec. 2, Ch. 259, L. 1974; R.C.M. 1947, 35-129.

7-15-2113. County housing authority to be nonprofit. It is hereby declared to be the policy of this state that:

(1) each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations; and

(2) no housing authority shall construct or operate any such project for profit or as a source of revenue to the county.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27F, R.C.M. 1935; R.C.M. 1947, 35-133(part).

7-15-2114. Certain laws controlling. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part are controlling.

History: En. Sec. 7, Ch. 153, L. 1941; R.C.M. 1947, 35-134; amd. Sec. 15, Ch. 253, L. 1979.

7-15-2115. Authorization for payment of rentals in lieu of taxes. (1) Any housing authority established pursuant to this part and/or the federal government may pay annual sums from rentals in lieu of taxes to any state and/or political subdivision thereof with respect to any real property, including improvements thereon, owned or held by either such housing authority or the federal government.

(2) The amount so paid for any year upon such property shall not exceed the taxes which would be paid to the state and/or subdivision thereof, as the case may be, upon such property if it were not exempt from taxation, with such allowances as may be considered to be appropriate for expenditures by the government for streets, utilities, or other public services to serve such property.

History: En. Sec. 4, Ch. 215, L. 1943; R.C.M. 1947, 35-304.

7-15-2116 through 7-15-2120 reserved.

7-15-2121. Authorization for rural housing projects. Housing authorities created for counties are specifically empowered and authorized to borrow money, accept grants, and exercise their other powers to provide housing for farmers of low income.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27C, R.C.M. 1935; R.C.M. 1947, 35-130(part).

7-15-2122. Operation of rural housing projects. (1) In connection with the projects authorized by 7-15-2121, such housing authorities may enter into such leases or purchase agreements, accept such conveyances, and rent or sell dwellings forming part of such projects to or for farmers of low income as such housing authority deems necessary in order to assure the achievement of the objectives of this part.

(2) Such leases, agreements, or conveyances may include such covenants as the housing authority deems appropriate regarding such dwellings and the tracts of lands described in any such instrument. The covenants shall be deemed to run with the land where the housing authority deems it necessary and the parties to such instrument so stipulate.

(3) Nothing contained in this section and 7-15-2121 shall be construed as limiting any other powers of any housing authority, except that no more than 2 acres of land per dwelling, together with the dwelling houses thereon provided for under the provisions of this part, shall be exempt from taxation and that upon title to said 2 acres of land and the dwelling houses thereon passing to private ownership, the said land and the dwelling houses thereon shall be restored to the tax rolls and be subject to taxation.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27C, R.C.M. 1935; R.C.M. 1947, 35-130(part).

7-15-2123. Housing applications by farmers. (1) The owner of any farm operated or worked upon by farmers of low income in need of safe and sanitary housing may file an application with a housing authority of a county requesting that it provide for a safe and sanitary dwelling or dwellings for occupancy by such farmers of low income.

(2) Such applications shall be received and examined by housing authorities in connection with the formulation of projects or programs to provide housing for farmers of low income.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27D, R.C.M. 1935; R.C.M. 1947, 35-131.

7-15-2124. Definition of term farmers of low income. "Farmers of low income" shall mean persons or families who, at the time of their admission to occupancy in a dwelling of the authority:

(1) live under unsafe or unsanitary housing conditions;

(2) derive their principal income from operating or working upon a farm; and

(3) had an aggregate average annual net income for the 3 years preceding their admission that was less than the amount determined by the authority to be necessary, within its area of operation, to enable them, without financial assistance, to obtain decent, safe, and sanitary housing without overcrowding.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27E, R.C.M. 1935; R.C.M. 1947, 35-132.

Parts 22 through 40 reserved

Part 41

General Provisions Related to Municipal Housing and Construction

7-15-4101. Numbering of houses and lots. The city or town council has power to regulate the numbering of houses and lots and to change the same.

History: En. Subd. 14, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.13, R.C.M. 1935; R.C.M. 1947, 11-916.

7-15-4102. Findings and policy with regard to unsanitary and unsafe private dwellings. (1) It is hereby declared that:

(a) unsanitary or unsafe privately owned dwelling accommodations exist in urban areas throughout the state, and these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, morals, and welfare of the citizens of the state and impair economic values;

(b) in many instances, the owners of such accommodations, due to poverty, unavailability of credit, and increased costs, are unable to finance the rehabilitation of their dwellings; and

(c) the municipal corporations of the state are uniquely able to render financial assistance to these owners of unsafe and unsanitary dwellings, and such assistance is a public use and purpose for which public money may be spent.

(2) The necessity for the provisions of 7-15-4103 is hereby declared, as a matter of legislative determination, to be in the public interest.

History: En. 11-1025 by Sec. 1, Ch. 131, L. 1975; R.C.M. 1947, 11-1025(1).

7-15-4103. Authorization for municipalities to furnish assistance in the rehabilitation of private dwellings. When it has determined that unsanitary or unsafe privately owned dwelling accommodations exist within the limits of the city or town and when it has further determined that the owners of such accommodations are unable under the prevailing market conditions to finance rehabilitation of their dwellings without assistance, the governing body of any municipal corporation:

(1) may finance the rehabilitation of such unsanitary or unsafe privately owned dwelling accommodations through the use of grants of funds or property, direct loans, loan guarantees, and other means;

(2) may apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government or the state, county, or other public body or from any other public or private source for the purpose of this section and 7-15-4102; and

(3) may enter into and carry out contracts in connection therewith.

History: En. 11-1025 by Sec. 1, Ch. 131, L. 1975; R.C.M. 1947, 11-1025(2).

7-15-4104 through 7-15-4120 reserved.

7-15-4121. Adoption of building, electrical, and plumbing codes. The governing body of an incorporated city or town may adopt technical building, electrical, and plumbing codes, in whole or in part, by reference under the procedure provided in 7-5-4202.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(part).

7-15-4122. Construction specifications. The city or town council has power to:

(1) prescribe the thickness, strength, and manner of constructing stone, brick, and other buildings; and

(2) order the construction of fire escapes thereon.

History: En. Subd. 51, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.50, R.C.M. 1935; R.C.M. 1947, 11-953.

7-15-4123. Inspection of building materials. The city or town council has power to provide for the inspection and measuring of lumber and other building materials.

History: En. Subd. 57, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.56, R.C.M. 1935; R.C.M. 1947, 11-959.

7-15-4124. Entrances and safety exits for buildings. The city or town council has power to:

(1) compel the owner of a building to erect fire escapes and proper exits and entrances when necessary for safety;

(2) regulate the construction of entrances of basements, cellars, and other floors to buildings from the sidewalks.

History: (1)En. Subd. 67, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.66, R.C.M. 1935; Sec. 11-969, R.C.M. 1947; (2)En. Subd. 70, Sec. 5039, R.C.M. 1921, amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.69, R.C.M. 1947; Sec. R.C.M. 1947, 11-969, 11-972(part).

7-15-4125. Repair of damaged structures. The city or town council has power to require the owner of a sidewalk, house, or other structure which is dangerous to passers-by to repair or remove the same after notice.

History: En. Subd. 72, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.71, R.C.M. 1935; R.C.M. 1947, 11-974.

7-15-4126. Regulation of partition fences and party walls. The city or town council has power to regulate partition fences and party walls not already constructed.

History: En. Subd. 50, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.49, R.C.M. 1935; R.C.M. 1947, 11-952.

Part 42

Urban Renewal

7-15-4201. Short title. This part and part 43 shall be known and may be cited as the "Urban Renewal Law".

History: En. Sec. 20, Ch. 195, L. 1959; R.C.M. 1947, 11-3920.

7-15-4202. Existence of blighted areas and resulting problems — statement of policy. It is hereby found and declared:

(1) that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state, exist in municipalities of the state;

(2) that the existence of such areas:

(a) contributes substantially and increasingly to the spread of disease and crime and depreciation of property values;

(b) constitutes an economic and social liability;

(c) substantially impairs or arrests the sound growth of municipalities;

(d) retards the provision of housing accommodations;

(e) aggravates traffic problems; and

(f) substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and

(3) that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities.

History: **En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).**

7-15-4203. Need for redevelopment and rehabilitation of blighted areas. It is further found and declared:

(1) that certain of such blighted areas or portions thereof may require acquisition, clearance, and disposition subject to use restrictions as provided in this part, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation;

(2) that other areas or portions thereof may, through the means provided in this part, be susceptible of rehabilitation in such a manner that the conditions and evils enumerated in 7-15-4202 may be eliminated, remedied, or prevented; and

(3) that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

History: **En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).**

7-15-4204. Interpretation. It is further found and declared:

(1) that the powers conferred by this part and part 43 are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and

(2) that the necessity in the public interest for the provisions enacted in this part and part 43 is hereby declared as a matter of legislative determination.

History: **En. Sec. 2, Ch. 195, L. 1959; R.C.M. 1947, 11-3902(part).**

7-15-4205. Scope. Insofar as the provisions of this part and part 43 are inconsistent with the provisions of any other law, the provisions of this part and part 43 shall be controlling. The powers conferred by this part and part 43 shall be in addition and supplemental to the powers conferred by any other law.

History: **En. Sec. 19, Ch. 195, L. 1959; R.C.M. 1947, 11-3919(part).**

7-15-4206. Definitions. The following terms, wherever used or referred to in this part or part 43, shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" shall mean a public agency created by 7-15-4232.

(2) "Blighted area" shall mean an area which is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodations; or constitutes an economic or social liability and/or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

(a) the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; and/or age obsolescence of buildings or improvements, whether residential or nonresidential;

(b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

(c) inappropriate or mixed uses of land or buildings;

(d) high density of population and overcrowding;

(e) defective or inadequate street layout;

(f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(g) excessive land coverage;

(h) unsanitary or unsafe conditions;

(i) deterioration of site;

(j) diversity of ownership;

(k) tax or special assessment delinquency exceeding the fair value of the land;

(l) defective or unusual conditions of title;

(m) improper subdivision or obsolete platting;

(n) the existence of conditions which endanger life or property by fire or other causes; or

(o) any combination of such factors.

(3) "Bonds" shall mean any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(4) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(5) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(6) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(7) "Mayor" shall mean the chief executive of a city or town.

(8) "Municipality" shall mean any incorporated city or town in the state.

(9) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality shall elect to undertake activities on an annual increment basis.

(10) "Obligee" shall include any bondholder or agent or trustee for any bondholder or lessor demising to the municipality property used in connection with an urban renewal project or any assignee or assignees of such

lessor's interest or any part thereof and the federal government when it is a party to any contract with the municipality.

(11) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint-stock association, or school district and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(12) "Public body" shall mean the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.

(13) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(14) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith and every estate, interest, right, and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise.

(15) "Redevelopment" may include:

(a) acquisition of a blighted area or portion thereof;

(b) demolition and removal of buildings and improvements;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and

(d) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(16) "Rehabilitation" may include the restoration and renewal of a blighted area or portion thereof in accordance with an urban renewal plan by:

(a) carrying out plans for a program of voluntary or compulsory repair and rehabilition of buildings or other improvements;

(b) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary, or unsafe conditions; lessen density; reduce traffic hazards; eliminate obsolete or other uses detrimental to the public welfare; to otherwise remove or prevent the spread of blight or deterioration; or to provide land for needed public facilities;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part; and

(d) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with such urban renewal plan.

(17) "Urban renewal area" means a blighted area which the local governing body designates as appropriate for an urban renewal project or projects.

(18) "Urban renewal plan" means a plan, as it exists from time to time, for one or more urban renewal areas or for an urban renewal project, which plan:

(a) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and

(b) shall be sufficiently complete to indicate, on a yearly basis or otherwise:

(i) such land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation as may be proposed to be carried out in the urban renewal area;

(ii) zoning and planning changes, if any;

(iii) land uses, maximum densities, building requirements; and

(iv) the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(19) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight and may involve redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.

History: **En. Sec. 1, Ch. 195, L. 1959; amd. Sec. 1, Ch. 210, L. 1969; R.C.M. 1947, 11-3901(part).**

7-15-4207. Prohibition against discrimination. For all of the purposes of this part and part 43, no person may be subjected to discrimination because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin.

History: **En. Sec. 17, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1977; R.C.M. 1947, 11-3917; amd. Sec. 16, Ch. 253, L. 1979.**

7-15-4208. Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this part and part 43, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this part and part 43, including the formulation of a workable program; the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality); the exercise of its zoning powers; the enforcement of other laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements; the disposition of any property acquired; and the provision of necessary public improvements.

History: **En. Sec. 3, Ch. 195, L. 1959; R.C.M. 1947, 11-3903.**

7-15-4209. Development of workable urban renewal program. (1) A municipality, for the purposes of this part and part 43, may formulate a workable program for utilizing appropriate private and public resources:

(a) to eliminate and prevent the development or spread of blighted areas;

(b) to encourage needed urban rehabilitation;

(c) to provide for the redevelopment of such areas; or

(d) to undertake such of the aforesaid activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program.

(2) Such workable program may include, without limitation, provision for:

(a) the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards;

(b) the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds, and other public improvements; by encouraging voluntary rehabilitation; and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and

(c) the clearance and redevelopment of blighted areas or portions thereof.

History: **En. Sec. 4, Ch. 195, L. 1959; R.C.M. 1947, 11-3904.**

7-15-4210. Resolution of necessity required to utilize provisions of part. No municipality shall exercise any of the powers hereafter conferred upon municipalities by this part and part 43 until after its local governing body shall have adopted a resolution finding that:

(1) one or more blighted areas exist in such municipality; and

(2) the rehabilitation, redevelopment, or a combination thereof of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality.

History: **En. Sec. 5, Ch. 195, L. 1959; amd. Sec. 1, Ch. 38, L. 1965; R.C.M. 1947, 11-3905.**

7-15-4211. Preparation of comprehensive development plan for municipality. For the purpose of approving an urban renewal plan and other municipal purposes, authority is hereby vested in every municipality:

(1) to prepare, to adopt, and to revise from time to time a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings);

(2) to establish and maintain a planning commission for such purpose and related municipal planning activities; and

(3) to make available and appropriate necessary funds therefor.

History: **En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).**

7-15-4212. Preparation of urban renewal plan. The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality.

History: **En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).**

7-15-4213. Review of urban renewal plan by planning commission. (1) Prior to its approval of an urban renewal project, the local governing body shall submit the urban renewal project plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts thereof for the development of the municipality as a whole.

(2) The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within 60 days after receipt of it.

History: **En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).**

7-15-4214. Hearing on urban renewal plan required. (1) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof.

(2) Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said 60 days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

7-15-4215. Notice of hearing on urban renewal plan. (1) The notice required by 7-15-4214(1) shall be given by publication once each week for 2 consecutive weeks, not less than 10 or more than 30 days prior to the date of the hearing, in a newspaper having a general circulation in the urban renewal area of the municipality and by mailing a notice of such hearing, not less than 10 days prior to the date of the hearing, to the persons whose names appear on the county treasurer's tax roll as the owners or reputed owners of the property, at the address shown on the tax roll.

(2) The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part).

7-15-4216. Requirements for approval of urban renewal plans and projects. (1) The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared.

(2) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has by resolution determined such area to be a blighted area and designated such area as appropriate for an urban renewal project.

(3) An urban renewal plan adopted after July 1, 1979, must be approved by ordinance.

(4) All urban renewal plans approved by resolution prior to May 8, 1979, are hereby validated.

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 1, Ch. 667, L. 1979.

Compiler's Comments

Effective date. Sec. 13, Ch. 667, L. 1979, provided: "This act is effective on passage and approval." Approved May 8, 1979.

7-15-4217. Criteria for approval of urban renewal project. Following the hearing required by 7-15-4214, the local governing body may, by ordinance, approve an urban renewal project if it finds that:

(1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project;

(2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole;

(3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and

(4) a sound and adequate financial program exists for the financing of said project.

History: **En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 2, Ch. 667, L. 1979.**

7-15-4218. Voter approval of urban renewal plan required when general obligation bonds to be used. If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in 7-15-4302(1) or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of part 44 of chapter 7 or of part 43 of chapter 13, the question of approving the plan and issuing such bonds shall be submitted to a vote of the qualified electors of such municipality, in accordance with the provisions governing municipal general obligation bonds under chapter 7, part 42, at the same election and shall be approved by a majority of those qualified electors voting on such question.

History: **En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(part); amd. Sec. 46, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "governing municipal general obligation bonds under chapter 7, part 42" for "of [7-7-4221 through 7-7-4233]".

7-15-4219. Effect of approval of urban renewal project. Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

History: **En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(f).**

7-15-4220. Use of neighborhood development program to implement urban renewal activities. (1) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. The undertaking of urban renewal activities on a yearly basis shall be designated as a "neighborhood development program" and the financing of such activities shall be approved in accordance with 7-15-4218.

(2) In the event of such election, the municipality shall present its proposed annual increment activities or undertakings for public approval in keeping with 7-15-4211 through 7-15-4221. Such activity year shall relate to the budget year of the municipality.

(3) Such activities need not be limited to contiguous areas. However, such activities shall be confined to the areas as outlined in the urban renewal plan as approved by the municipality in accordance with this part. The yearly activities shall constitute a part of the urban renewal plan, and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously.

(4) Every municipality shall have all the power necessary or convenient to plan and undertake neighborhood development projects consisting of

urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this part and part 43 for carrying out and planning urban renewal projects.

History: **(1), (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; (2)En. Sec. 1, Ch. 195, L. 1959; amd. Sec. 1, Ch. 210, L. 1969; Sec. 11-3901, R.C.M. 1947; (4)En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; Sec. 11-3907, R.C.M. 1947; R.C.M. 1947, 11-3901(part), 11-3906(h), 11-3907(j).**

7-15-4221. Modification of urban renewal project plan. (1) An urban renewal project plan may be modified at any time by the local governing body. If modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser or his successor or successors in interest may be entitled to assert.

(2) An urban renewal plan may be modified by ordinance.

(3) All urban renewal plans approved or modified by resolution prior to May 8, 1979, are hereby validated.

(4) A plan may be modified by:

(a) the procedure set forth in 7-15-4212 through 7-15-4219 with respect to adoption of an urban renewal plan;

(b) the procedure set forth in the plan.

History: **En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; R.C.M. 1947, 11-3906(e); amd. Sec. 3, Ch. 667, L. 1979.**

7-15-4222 through 7-15-4230 reserved.

7-15-4231. Exercise of powers related to urban renewal. A municipality may itself exercise its urban renewal project powers as herein defined or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency created by 7-15-4232 or a department or other officers of the municipality as they are authorized to exercise under this part and part 43.

History: **En. Sec. 15, Ch. 195, L. 1959; R.C.M. 1947, 11-3915(a).**

7-15-4232. Authorization to assign urban renewal powers to municipal departments or to create urban renewal agency. When a municipality has made the finding prescribed in 7-15-4210 and has elected to have the urban renewal project powers exercised as specified in 7-15-4233:

(1) such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate; or

(2) the legislative body of a city may create an urban renewal agency in such municipality, to be known as a public body corporate, to which such powers may be assigned.

History: **En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(a).**

7-15-4233. Powers which may be exercised by urban renewal agency or authorized department. (1) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

(a) to formulate and coordinate a workable program as specified in 7-15-4209;

(b) to prepare urban renewal plans;

(c) to prepare recommended modifications to an urban renewal project plan;

(d) to undertake and carry out urban renewal projects as required by the local governing body;

(e) to make and execute contracts as specified in 7-15-4251, 7-15-4254, 7-15-4255, and 7-15-4281, with the exception of contracts for the purchase or sale of real or personal property;

(f) to disseminate blight clearance and urban renewal information;

(g) to exercise the powers prescribed by 7-15-4255, except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body;

(h) to enter any building or property in any urban renewal area in order to make surveys and appraisals in the manner specified in 7-15-4257;

(i) to improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area;

(j) to insure real or personal property as provided in 7-15-4258;

(k) to effectuate the plans provided for in 7-15-4254;

(l) to prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation;

(m) to prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

(n) to conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects;

(o) to negotiate for the acquisition of land;

(p) to study the closing, vacating, planning, or replanning of streets, roads, sidewalks, ways, or other places and to make recommendations with respect thereto;

(q) to organize, coordinate, and direct the administration of the provisions of this part and part 43;

(r) to perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

(2) Any powers granted in this part or part 43 that are not included in subsection (1) as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

History: **En. Sec. 15, Ch. 195, L. 1959; R.C.M. 1947, 11-3915(b).**

7-15-4234. Urban renewal agency to be administered by appointed board of commissioners. (1) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency, which shall consist of five commissioners.

(2) The initial membership shall consist of one commissioner appointed for 1 year, one for 2 years, one for 3 years, and two for 4 years. Each appointment thereafter shall be for 4 years. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

(3) Each commissioner shall hold office until his successor has been appointed and has qualified.

(4) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

(5) Any persons may be appointed as commissioners if they reside within the municipality.

(6) A commissioner may be removed for inefficiency, neglect of duty, or misconduct in office.

History: **En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part).**

7-15-4235. Restrictions on agency commissioners holding other public office. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this part or part 43 shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or office.

History: **En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).**

7-15-4236. Conduct of business. The powers and responsibilities of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present unless in any case the bylaws shall require a larger number.

History: **En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part).**

7-15-4237. Annual report. (1) An agency authorized to transact business and exercise powers under this part and part 43 shall file with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year.

(2) The report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of such calendar year.

(3) At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

History: **En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part).**

7-15-4238. Employment of necessary staff. The urban renewal agency or department or officers exercising urban renewal project powers shall be supplied with the necessary technical experts and such other agents and employees, permanent and temporary, as are required.

History: **En. Sec. 16, Ch. 195, L. 1959; R.C.M. 1947, 11-3916(part); amd. Sec. 17, Ch. 253, L. 1979.**

7-15-4239. Control of conflict of interest. (1) (a) No public official, no employee of a municipality or urban renewal agency, and no department or officers which have been vested by a municipality with urban renewal project powers and responsibilities under 7-15-4231 shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project.

(b) Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body.

(2) If any such official or department or division head owns or controls or owned or controlled within 2 years prior to the date of hearing on the urban renewal project any interest, direct or indirect, in any property which he knows is included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body. Any such official or department or division head shall not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers which have been vested with urban renewal project powers by the municipality pursuant to the provisions of 7-15-4231.

History: **En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).**

7-15-4240. Misconduct in office. Any violation of the provisions of 7-15-4235 or 7-15-4239 shall consititute misconduct in office.

History: **En. Sec. 18, Ch. 195, L. 1959; R.C.M. 1947, 11-3918(part).**

7-15-4241 through 7-15-4250 reserved.

7-15-4251. General powers of municipalities in connection with urban renewal. Every municipality shall have all the power necessary or convenient:

(1) to carry out and effectuate the purposes and provisions of this part and part 43;

(2) to undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this part and part 43, and to disseminate blight clearance and urban renewal information;

(3) to organize, coordinate, and direct, within the municipality, the administration of the provisions of this part and part 43 as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively;

(4) to exercise all or any part or combination of powers granted in this part or part 43.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4252. Prevention and elimination of urban blight. The municipality is authorized to develop, test, and report methods and techniques and carry out demonstrations and other activities for the prevention and the elimination of urban blight and to apply for, accept, and utilize grants of funds from the federal government for such purposes.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4253. Relocation of displaced families. Every municipality shall have power to prepare plans for the relocation of families displaced from an urban renewal area and to make relocation payments and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(g).

7-15-4254. Municipal power in the preparation of various plans. (1) Every municipality shall have power, within the municipality:

(a) to make or have made all plans necessary to the carrying out of the purposes of this part and to contract with any person, public or private, in making and carrying out such plans; and

(b) to adopt or approve, modify, and amend such plans.

(2) Such plans may include, without limitation:

(a) a comprehensive plan or parts thereof for the locality as a whole;

(b) urban renewal plans;

(c) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;

(d) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and

(e) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4255. Authority to provide or contract for services related to urban renewal. (1) Every municipality shall have power to:

(a) provide or arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, or roads in connection with an urban renewal project;

(b) install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements.

(2) Every municipality shall have power to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards in the undertaking or carrying out of an urban renewal project and to include in any contract let in connection with such a project provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(b).

7-15-4256. Restriction on operation of certain utility services by municipality. Nothing in this part or part 43 shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines, or other public utility facilities, excepting waterlines and sewerlines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(l).

7-15-4257. Authority to enter private property. (1) Every municipality shall have power, within the municipality, to enter upon any building or property in any urban renewal area in order to make surveys and appraisals and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.

(2) Such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4258. Acquisition and administration of real and personal property. (1) Every municipality shall have power to:

(a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise any real property and such personal property as may be necessary for the administration of the provisions contained in this part and part 43, together with any improvements thereon;

(b) hold, improve, clear, or prepare for redevelopment any such property;

(c) dispose of any real property;

(d) insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance.

(2) However, no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to an urban renewal project.

(3) A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217.

History: (1), (2)En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; Sec. 11-3907, R.C.M. 1947; (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; R.C.M. 1947, 11-3906(part), 11-3907(part).

7-15-4259. Exercise of power of eminent domain. (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for an urban renewal project under this part, a municipality shall have the right to acquire by condemnation any interest in real property which it may deem necessary for such purpose.

(2) Condemnation for urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purposes of this part.

(3) The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use thereof.

History: En. Sec. 8, Ch. 195, L. 1959; R.C.M. 1947, 11-3908.

7-15-4260. Exemption from levy and sale for certain property. All property of a municipality, including funds, owned or held by it for the purposes of this part and part 43 shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this part or part 43 by a municipality on an urban renewal project or the rents, fees, grants, or revenues derived from these projects.

History: En. Sec. 12, Ch. 195, L. 1959; R.C.M. 1947, 11-3912(a); amd. Sec. 4, Ch. 667, L. 1979.

7-15-4261. Exemption from taxation for certain property. (1) The property of a municipality acquired or held for the purposes of this part is declared to be public property used for essential public and governmental purposes, and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof.

(2) Such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property.

History: En. Sec. 12, Ch. 195, L. 1959; R.C.M. 1947, 11-3912(b).

7-15-4262. Disposal of municipal property in urban renewal areas. (1) A municipality may:

(a) sell, lease, or otherwise transfer real property in an urban renewal area or any interest therein acquired by it for an urban renewal project for residential, recreational, commercial, industrial, or other uses or for public use and enter into contracts with respect thereto; or

(b) retain such property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets and alleys, administrative buildings, or civic centers, in accordance with the urban renewal project plan and subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this part.

(2) Such sale, lease, other transfer, or retention and any agreement relating thereto may be made only after the approval of the urban renewal plan by the local governing body.

(3) Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with

the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the uses provided in such plan; the restrictions upon and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of blighted areas.

(4) Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan.

History: **En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(part).**

7-15-4263. Procedure to dispose of property to private persons. (1) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable procedures as it shall prescribe or as provided in this section.

(2) (a) A municipality shall by public notice invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area or any part thereof.

(b) Such notice shall be by publication once each week for 3 consecutive weeks in a newspaper having a general circulation in the community prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of 7-15-4262 through 7-15-4266.

(c) Such notice shall identify the area or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice.

(3) The municipality shall consider all redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out. The municipality may accept such proposals as it deems to be in the public interest and in furtherance of the purposes of this part and part 43. Thereafter, the municipality may execute, in accordance with the provisions of 7-15-4262 and 7-15-4264, and deliver contracts, deeds, leases, and other instruments of transfer.

History: **En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(b).**

7-15-4264. Obligations of transferees of municipal property in urban renewal area. (1) The purchasers or lessees and their successors and assigns shall be obligated to devote real property transferred pursuant to 7-15-4262 only to the uses specified in the urban renewal plan and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan.

(2) The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon.

(3) The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof) shall not prevent the recording of such contract or conveyance in the land records of the clerk and recorder or the county in which such city or town is located, in such manner as to afford actual or constructive notice thereof.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(part).

7-15-4265. Presumption of regularity in transfer of title. Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this part or part 43 shall be conclusively presumed to have been executed in compliance with the provisions of this part and part 43 insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

History: En. Sec. 14, Ch. 195, L. 1959; R.C.M. 1947, 11-3914.

7-15-4266. Temporary use of municipal property in urban renewal area. A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of 7-15-4262 and 7-15-4264, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. The municipality may, after a public hearing, extend the time for a period not to exceed 3 years.

History: En. Sec. 9, Ch. 195, L. 1959; amd. Sec. 1, Ch. 134, L. 1973; R.C.M. 1947, 11-3909(c).

7-15-4267. Cooperation by public bodies. (1) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body authorized by law or by this part or part 43, upon such terms, with or without consideration, as it may determine, may:

(a) dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality;

(b) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;

(c) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan;

(d) lend, grant, or contribute funds to a municipality;

(e) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this part or part 43, including the furnishing of funds or other assistance in connection with an urban renewal project;

(f) cause to be furnished public buildings and public facilities, including parks; playgrounds; recreational, community, educational, water, sewer, or drainage facilities; or any other works which it is otherwise empowered to undertake;

(g) furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places;

(h) plan or replan or zone or rezone any part of the urban renewal area; and

(i) provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(2) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with provisions of 7-15-4263.

History: **En. Sec. 13, Ch. 195, L. 1959; R.C.M. 1947, 11-3913(a), (b).**

7-15-4268 through 7-14-4280 reserved.

7-15-4281. Financial authority in connection with urban renewal. (1) Every municipality shall have power to:

(a) borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government; from the state, a county, or any other public body; or from any sources, public or private, for the purposes of this part and enter into and carry out contracts in connection therewith;

(b) appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this part and in accordance with state law levy taxes and assessments for such purposes;

(c) invest any urban renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement in property or securities in which mutual savings banks may legally invest funds subject to their control;

(d) adopt, in accordance with state law, annual budgets for the operation of an urban renewal agency, department, or office vested with urban renewal project powers under 7-15-4231;

(e) enter, in accordance with state law, into agreements, which may extend over any period, with agencies or departments vested with urban renewal project powers under 7-15-4231 respecting action to be taken by such municipality pursuant to any of the powers granted by this part or part 43;

(f) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places and plan or replan, zone or rezone any part of the municipality in accordance with state law.

(2) A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this part and part 43.

History: **En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).**

7-15-4282. Authorization for tax increment financing. Any urban renewal plan, as defined in 7-15-4206, may contain a provision or be amended to contain a provision for the segregation and application of tax increments, as provided in 7-15-4282 through 7-15-4292.

History: **En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part).**

7-15-4283. Definitions related to tax increment financing. For purposes of 7-15-4282 through 7-15-4292, the following definitions apply unless otherwise provided or indicated by the context:

(1) "Actual taxable value" means the taxable value of taxable property at any time, as calculated from the assessment roll last equalized.

(2) "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

(3) "Incremental taxable value" means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area subject to taxation.

(4) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area or a part thereof is located against the incremental taxable value.

(5) "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through 7-15-4292.

(6) "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

(7) "Taxing body" means any city, town, county, school district, or other political subdivision or governmental unit of the state, including the state, which levies taxes against property within the urban renewal area.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(2); amd. Sec. 5, Ch. 667, L. 1979.

Compiler's Comments

Commissioner correction. In Ch. 667, L. 1979, the second reference in subsection (2) was erroneously to section 9 of the bill enacting Ch. 667. Section 9 amended section 7-15-4289, MCA. The Code Commissioner has inserted the correct reference (7-15-4293, section 12 of the bill). The error arose when the Legislature renumbered the bill sections but overlooked this reference in the course of enacting Ch. 667.

7-15-4284. Filing of tax increment provisions of urban renewal plan. (1) The clerk of the municipality shall file a certified copy of each urban renewal plan or amendment thereto containing a tax increment provision with the state, county, or city officers responsible for assessing and determining the taxable value of taxable property within the urban renewal area or any part thereof.

(2) A certified copy of the plan or amendment shall also be filed with the clerk or other appropriate officer of each of the affected taxing bodies.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part).

7-15-4285. Determination and report of original, actual, and incremental taxable values. The officer or officers responsible for assessing and determining the taxable value of the taxable property located within the urban renewal area shall, immediately upon receipt of the tax increment provision and each year thereafter, calculate and report to the municipality and to any other affected taxing body the base, actual, and incremental taxable values of such property.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 6, Ch. 667, L. 1979.

7-15-4286. Procedure to determine and disburse tax increment. (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision shall be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area and the base taxable value of all taxable property located within the urban renewal area. The mill rate so determined shall be levied against the sum of the actual taxable value of all taxable property located within as well as outside the urban renewal area.

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the urban renewal area shall be paid into a special fund held by the treasurer of the municipality and used as provided in 7-15-4282 through 7-15-4292.

(b) The balance of the taxes collected in each year shall be paid to each of the taxing bodies as otherwise provided by law.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(4); amd. Sec. 7, Ch. 667, L. 1979.

7-15-4287. Provision for use of portion of tax increment. (1) At the time of adoption of a tax increment provision or at any time subsequent thereto, the governing body of the municipality may provide that a portion of the tax increment from the incremental taxable value shall be released from segregation by an adjustment of the base taxable value, provided that:

(a) all principal and interest then due on bonds for which the tax increment has been pledged has been fully paid; and

(b) the tax increment resulting from the smaller incremental value is determined by the governing body to be sufficient to pay all principal and interest due later on the bonds.

(2) The adjusted base value determined under subsection (1) shall be reported by the clerk to the officers and taxing bodies to which the increment provision is reported.

(3) Thereafter, the adjusted base value is used in determining the mill rates of affected taxing bodies unless the tax increment resulting from the adjustment is determined to be insufficient for this purpose. In this case, the governing body must reduce the base value to the amount originally determined or to a higher amount necessary to provide tax increments sufficient to pay all principal and interest due on the bonds.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(6); amd. Sec. 8, Ch. 667, L. 1979.

7-15-4288. Costs which may be paid by tax increment financing. The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project:

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants;

(4) the acquisition, construction, and improvement of streets, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, waterlines, waterways, public buildings, and other public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property

to be used in connection with improvements for which the foregoing costs may be incurred; and

(5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 1, Ch. 147, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (5).

7-15-4289. Use of tax increments for bond payments. The tax increment may be pledged to the payment of the principal of premiums, if any, and interest on bonds which the municipality may issue for the purpose of providing funds to pay such costs.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 9, Ch. 667, L. 1979.

7-15-4290. Use of property taxes for payment of bonds. (1) The tax increment may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4289. Any municipality issuing such bonds may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based.

(2) No property taxes, except the tax increment derived from property within the urban renewal area and tax collections used to pay for services provided to the municipality by an urban renewal project, may be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 10, Ch. 667, L. 1979.

7-15-4291. Agreements to remit unused portion of tax increments. The municipality may also enter into agreements with the other affected taxing bodies to remit to such taxing bodies any portion of the annual tax increment not currently required for the payment of the costs listed in 7-15-4288 or pledged to the payment of the principal of premiums, if any, and interest on the bonds referred to in 7-15-4289.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part).

7-15-4292. Termination of tax increment financing. (1) The tax increment provision shall terminate upon the 10th year following its adoption or upon the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest thereon, whichever last occurs.

(2) Any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision shall be distributed among the various taxing bodies in proportion to their property tax revenues from the district.

(3) After termination of the tax increment provision, all taxes shall be levied upon the actual taxable value of the taxable property in the urban renewal area and shall be paid into the funds of the respective taxing bodies.

(4) No bonds with tax increment provisions for the repayment thereof may be issued subsequent to 10 years after April 29, 1977.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(7).

7-15-4293. Adjustment of base taxable value following change of law. If the base taxable value of an urban renewal area is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue or its agents to calculate the base taxable value as it would have been on the date of the original determination had the change been in effect on that date. The governing body may adjust the base taxable value to that value reported by the department of revenue, under the provisions of 7-15-4287.

History: En. Sec. 12, Ch. 667, L. 1979; amd. Sec. 2, Ch. 147, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "administrative, or judicial" before "change in the method" near the beginning of the first sentence; inserted "or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established" after "the tax exemption status of property" in the first sentence; substituted "change" for "statutory changes" near the end of the first sentence.

Part 43

Urban Renewal Continued

7-15-4301. Authorization to issue urban renewal bonds and refunding bonds. (1) A municipality shall have the power to:

(a) issue bonds from time to time in its discretion, to finance the undertaking of any urban renewal project under this part and part 42, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects; and

(b) issue refunding bonds for the payment or retirement of such bonds previously issued by it.

(2) Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects under this part and part 42, including the tax increment received and pledged by the municipality pursuant to 7-15-4282 through 7-15-4292. Payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects of the municipality under this part and part 42 or by a mortgage on all or part of any such projects.

(3) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part); amd. Sec. 11, Ch. 667, L. 1979.

7-15-4302. Authorization to issue general obligation bonds. (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project of a municipality, the municipality, in addition to any authority to issue bonds pursuant to 7-15-4301, may issue and sell its general obligation bonds.

(2) Any bonds issued pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

(3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project is considered a single purpose for the issuance of general obligation bonds, and the proceeds of the bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by this part and part 42 which are necessary or proper to complete the project in accordance with the approved plan and any modification thereof duly adopted by the local governing body.

History: (1), (2)En. Sec. 13, Ch. 195, L. 1959; Sec. 11-3913, R.C.M. 1947; (3)En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969; amd. Sec. 18, Ch. 158, L. 1971; Sec. 11-3906, R.C.M. 1947; R.C.M. 1947, 11-3906(part), 11-3913(c); amd. Sec. 18, Ch. 253, L. 1979.

7-15-4303. Bonds to be fully negotiable. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this part and part 42 shall be fully negotiable.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

7-15-4304. Presumption of regularity of bond issuance. In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this part and part 42 or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project as herein defined shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this part and part 42.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(f).

7-15-4305. Validity and sufficiency of signatures on bonds. In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this part and part 42 shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if such officials had remained in office until such delivery.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

7-15-4306. Bonds as legal investments. (1) All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this part and part 42, provided that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, money in an amount which (together with any other money irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which money under the terms of said agreement is required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity.

(2) Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations.

(3) Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: En. Sec. 11, Ch. 195, L. 1959; R.C.M. 1947, 11-3911.

7-15-4307. Tax exemption for bonds. Bonds issued under the provisions of this part and part 42 are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

7-15-4308 through 7-15-4320 reserved.

7-15-4321. Nature of urban renewal bonds. Bonds issued under 7-15-4301 shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall be subject only to the provisions of the Uniform Commercial Code and the limitations of this part and part 42.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part).

7-15-4322. *(Temporary)* **Details relating to urban renewal bonds.** (1) Bonds issued under 7-15-4301 may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates not exceeding the limitation of 17-5-102, be in such denomination or denominations, be in such form (either coupon or registered), carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places, be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by the resolution, ordinance, or trust indenture or mortgage authorized pursuant thereto.

(2) (a) The bonds may be sold at not less than 98% of par at public or private sale or may be exchanged for other bonds on the basis of par.

(b) The bonds may be sold to the federal government at private sale at not less than par, and if less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold at public or private sale at not less than 98% of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

7-15-4322. *(Revived July 1, 1983)* **Details relating to urban renewal bonds.** (1) Bonds issued under 7-15-4301 may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates not exceeding 9% a year, be in such denomination or denominations, be in such form (either coupon or registered), carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place or places, be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics as may be provided by the resolution, ordinance, or trust indenture or mortgage authorized pursuant thereto.

(2) (a) The bonds may be sold at not less than 98% of par at public or private sale or may be exchanged for other bonds on the basis of par.

(b) The bonds may be sold to the federal government at private sale at not less than par, and if less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold at public or private sale at not less than 98% of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(part); amd. Sec. 19, Ch. 253, L. 1979; amd. Sec. 7, Ch. 500, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "the limitation of 17-5-102" for "9% a year" near the middle of (1).

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

7-15-4323. Redemption of urban renewal bonds. Every municipality shall have power to redeem such bonds as have been issued pursuant to 7-15-4301 at the redemption price established therein or to purchase such bonds at less than redemption price. All such bonds so redeemed or purchased shall be canceled.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969; R.C.M. 1947, 11-3907(part).

7-15-4324. Special bond provisions when tax increment financing is involved. (1) Bonds issued under this part for which a tax increment is pledged pursuant to 7-15-4282 through 7-15-4292 shall be designed to mature not later than 25 years from their date of issue and shall mature in such years and amounts that the principal and interest due on the bonds in each year shall not exceed the estimated tax increment and other estimated revenues, including proceeds of the bonds available for payment of interest thereon, pledged to their payment to be received in such year.

(2) The governing body, in the resolution or ordinance authorizing the bonds, shall determine the estimated tax increment and other revenues, if any, for each year the bonds are to be outstanding. In calculating the costs under 7-15-4288 for which the bonds are issued, the municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increments pledged and sufficient for the payment thereof and to fund any reserve fund in respect of the bonds.

History: **En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963; amd. Sec. 21, Ch. 234, L. 1971; amd. Sec. 4, Ch. 287, L. 1974; amd. Sec. 1, Ch. 532, L. 1977; R.C.M. 1947, 11-3910(g).**

Part 44

Municipal Housing Authorities

7-15-4401. Findings and policy. It is hereby declared that:

(1) unsanitary or unsafe dwelling accommodations exist in urban areas throughout the state, and such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor conditions of buildings, improper planning, excessive land coverage, lack of proper light, air, and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes;

(2) in such urban areas, many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations;

(3) in such urban areas, there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof, and consequently, many persons of low income are forced to occupy overcrowded and congested dwelling accommodations;

(4) these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the citizens of the state and impair economic values;

(5) these conditions cannot be remedied by the ordinary operations of private enterprise;

(6) the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired;

(7) it is in the public interest that work on such projects be instituted as soon as possible; and

(8) the necessity for the provisions hereinafter enacted is hereby declared, as a matter of legislative determination, to be in the public interest.

History: **En. Sec. 2, Ch. 140, L. 1935; re-en. Sec. 5309.2, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1941; R.C.M. 1947, 35-102(part).**

7-15-4402. Definitions. As used in this part or part 45, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Authority" or "housing authority" means a public body and a body corporate and politic organized in accordance with the provisions of this part for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(2) "Bonds" means any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this part or part 45.

(3) "City" means any city which is or is about to be included in the territorial boundaries of an authority.

(4) "City clerk" and "mayor" mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor.

(5) "Commissioner" means one of the members of an authority appointed in accordance with the provisions of this part.

(6) "Community facilities" means real and personal property and buildings and equipment for recreational or social assemblies and for educational, health, or welfare purposes and necessary utilities, when designed primarily for the benefit and use of the housing authority and/or the occupants of the dwelling accommodations.

(7) "Contract" means any agreement of an authority with or for the benefit of an obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

(8) "Council" means the legislative body, council, board of commissioners, board of trustees, or other body charged with governing a city.

(9) "Elderly families" means families the head of which (or his spouse) is 60 years of age or over and who otherwise qualify as persons of low income within the meaning of the definition set forth in subsection (16).

(10) "Federal government" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.

(11) "Government" means the state and federal governments and any subdivision, agency, or instrumentality, corporate or otherwise, of either.

(12) (a) "Housing project" means all real and personal property, buildings and improvements, stores, offices, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking:

(i) to demolish, clear, remove, alter, or repair unsanitary or unsafe housing; and/or

(ii) to provide safe and sanitary dwelling accommodations for persons of low income.

(b) The term "housing project" may also be applied to the planning of the buildings and improvements; the acquisition of property; the demolition of existing structures; the construction, reconstruction, alteration, and repair of the improvements; and all other work in connection therewith.

(13) "Mortgage" means deeds of trust, mortgages, building and loan contracts, or other instruments conveying real or personal property as security for bonds and conferring a right to foreclose and cause a sale thereof.

(14) "Municipality" means any city, town, or incorporated village which is located within the territorial boundaries of an authority.

(15) "Obligee of the authority" or "obligee" means any bondholder, trustee for any bondholder, any lessor demising property to the authority used in connection with a housing project or any assignee or assignees of such lessor's interest or any part thereof, and the United States when it is a party to any contract with the authority.

(16) "Persons of low income" means persons or families who lack the amount of income which is necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

(17) "Real property" means lands, lands under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

(18) "State" means the state of Montana.

(19) "Trust indenture" means instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof.

History: En. Sec. 3, Ch. 140, L. 1935; re-en. Sec. 5309.3, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1957; amd. Sec. 1, Ch. 133, L. 1973; R.C.M. 1947, 35-103; amd. Sec. 20, Ch. 253, L. 1979.

7-15-4403. Petition to create municipal housing authority — hearing and notice. (1) Any 25 residents of a city and of the area within 10 miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area.

(2) Upon the filing of such a petition, the city clerk shall give notice of the time, place, and purpose of a public hearing at which the council will determine the need for an authority in the city and said surrounding area.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4404. Notice of hearing on petition. The notice required by 7-15-4403 shall be given at the city's expense by publishing a notice at least 10 days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area or, if there be no such newspaper, by posting such a notice in at least three public places within the city at least 10 days preceding the day on which the hearing is to be held.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4405. Hearing on petition. Upon the date fixed for said hearing held upon notice as provided in 7-15-4403 and 7-15-4404, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4406. Decision of city council. (1) After such a hearing, the council shall determine:

(a) whether unsanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area; and/or

(b) whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

(2) If it shall determine that either or both of the above-enumerated conditions exist, the council must draft an ordinance authorizing the mayor to appoint five commissioners to act as an authority.

(3) If the council, after a hearing as aforesaid, shall determine that neither of the above-enumerated conditions exist, it shall adopt a resolution denying the petition. After 3 months shall have expired from the date of the denial of any such petition, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4407. Criteria for determining if unsafe or unsanitary dwelling accommodations exist. In determining whether dwelling accommodations are unsafe or unsanitary, the council shall take into consideration the following:

(1) the physical condition and age of the buildings;

(2) the degree of overcrowding;

(3) the percentage of land coverage;

(4) the light and air available to the inhabitants of such dwelling accommodations;

(5) the size and arrangement of the rooms;

(6) the sanitary facilities; and

(7) the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4408. Voter approval required to create housing authority. The ordinance authorized by 7-15-4406(2) shall not be effective until it has been approved by a majority vote of the registered electors within the city limits voting at either a special or general election.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part); amd. Sec. 344, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-15-4409. Application for incorporation. (1) The commissioners shall present to the secretary of state an application signed by them which shall set forth (without any detail other than the mere recital):

(a) that a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;

(b) the name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this part;

(c) the term of office of each of the commissioners;
(d) the name which is proposed for the corporation; and
(e) the location of the principal office of the proposed corporation.

(2) The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the state to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application and that each subscribed and swore thereto in the officer's presence.

History: **En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).**

7-15-4410. Processing of application by secretary of state. (1) The secretary of state shall examine the application, and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this state or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.

(2) When the application has been made, filed, and recorded, the secretary of state shall make and issue to the commissioners a certificate of incorporation pursuant to this part, under the seal of the state, and shall record the same with the application.

History: **En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).**

7-15-4411. Effect of filing and recording application. When the application has been made, filed, and recorded as provided in 7-15-4409 and 7-15-4410, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application.

History: **En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).**

7-15-4412. Presumption of regularity in creation of municipal housing authority. (1) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this part upon proof of the issuance of the aforesaid certificate by the secretary of state.

(2) A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be conclusive proof of the filing and contents thereof.

History: **En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).**

7-15-4413. Boundaries of municipal housing authority. (1) The boundaries of such authority shall include said city and the area within 10 miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city unless a resolution shall have been adopted by the governing body of such other city declaring that there is a need for such authority to exercise its powers within that city.

(2) After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4414. Problems arising from existence of several overlapping authorities. (1) In case an area lies within 10 miles of the boundaries of more than one city, such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the secretary of state.

(2) No housing authority shall operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating therein.

History: En. Sec. 4, Ch. 140, L. 1935; re-en. Sec. 5309.4, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1953; amd. Sec. 3, Ch. 193, L. 1957; R.C.M. 1947, 35-104(part).

7-15-4415. Cooperation between housing authorities. Any two or more housing authorities may join or cooperate with one another in the exercise of any or all of the powers conferred on such housing authorities for the purpose of financing, planning, undertaking, constructing, or operating a housing project or projects located within the area of operation of any one or more of such housing authorities.

History: En. Sec. 10, Ch. 140, L. 1935; re-en. Sec. 5309.10, R.C.M. 1935; amd. Sec. 2, Ch. 153, L. 1941; R.C.M. 1947, 35-110.

7-15-4416. Cooperation among governmental units and housing authorities. (1) An authority shall have power to arrange with the state, its subdivisions and agencies, and any county, city, or municipality of the state, to the extent that it is within the scope of each of their respective functions:

(a) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing project;

(b) to provide and maintain parks and sewage, water, and other facilities adjacent to or in connection with housing projects; and

(c) to change the city or municipality map or to plan, replan, zone, or rezone any part of the city or municipality.

(2) (a) For the purpose of aiding and cooperating in the planning, construction, and operation of housing projects located within their respective territorial boundaries, the state, its subdivisions and agencies, and any county, city, or municipality of the state may, upon such terms, with or without consideration, as it may determine:

(i) grant, sell, convey, or lease any of its property to a housing authority or the United States of America or any agency thereof; and

(ii) to the extent that it is within the scope of each of their respective functions:

(A) cause the services customarily provided by each of them to be rendered for the benefit of the housing authority and/or the occupants of such housing projects;

(B) provide and maintain parks and sewage, water, and other facilities adjacent to or in connection with housing projects; and

(C) enter into any agreement to open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other such facilities; to change the city or municipality map; or to plan, replan, zone, or rezone any part of the city or municipality.

(b) Any law or statute to the contrary notwithstanding, any gift, grant, sale, conveyance, lease, or agreement provided for in this subsection may be made by the state, its subdivisions and agencies, and any county, city, or municipality of the state without appraisal, public notice, advertisement, or public bidding.

(c) In connection with the exercise of the power granted by subsection (2), any city or municipality may incur the entire expense of any such public improvement located within its territorial boundaries without assessment against abutting property owners.

(d) As used in subsection (2):

(i) "municipality" shall mean any city, town, or incorporated village of the state;

(ii) "housing project" shall mean any undertaking to demolish, clear, remove, alter, or repair unsafe or unsanitary housing and/or to provide dwelling accommodations for persons of low income, and said term may also include such buildings and equipment for recreational or social assemblies for educational, health, or welfare purposes and such necessary utilities as are designed primarily for the benefit and use of the housing authority and/or the occupants of such dwelling accommodations.

History: (1)En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; Sec. 35-109, R.C.M. 1947; (2)(a) thru (2)(c)En. Sec. 3, Ch. 138, L. 1935; re-en. Sec. 5309.30, R.C.M. 1935; Sec. 35-137, R.C.M. 1947; (2)(d)En. Sec. 2, Ch. 138, L. 1935; re-en. Sec. 5309.29, R.C.M. 1935; Sec. 35-136, R.C.M. 1947; R.C.M. 1947, 35-109(part), 35-136(3), (4), 35-137.

7-15-4417. Initial funding of housing authority. Immediately after the incorporation of a housing authority, the council or other governing body of a first- or second-class city included within the territorial boundaries of the authority:

(1) shall make an estimate of the amount of money necessary for the administrative expenses and overhead of the housing authority during the first year following the incorporation of the housing authority;

(2) shall appropriate such amount to the authority out of any money in the city treasury not appropriated to some other purpose; and

(3) shall cause the money so appropriated to be paid the authority as a donation.

History: Ap. p. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; Sec. 35-138, R.C.M. 1947; Ap. p. Sec. 2, Ch. 138, L. 1935; re-en. Sec. 5309.29, R.C.M. 1935; Sec. 36-136, R.C.M. 1947; R.C.M. 1947, 35-136(2), 35-138(part); amd. Sec. 21, Ch. 253, L. 1979.

7-15-4418. Interim funding of housing authority. In addition to the power granted in 7-15-4417, any municipality located in whole or in part within the boundaries of a housing authority may, annually and from time to time, make donations or advances to the authority of such sums as the municipality in its discretion may determine.

History: En. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; R.C.M. 1947, 35-138(part); amd. Sec. 22, Ch. 253, L. 1979.

7-15-4419. Authority to reimburse municipality for loans. The authority, when it has money available therefor, shall reimburse a municipality for all advances made to it by way of loan.

History: En. Sec. 4, Ch. 138, L. 1935; re-en. Sec. 5309.31, R.C.M. 1935; R.C.M. 1947, 35-138(part); amd. Sec. 23, Ch. 253, L. 1979.

7-15-4420. Procedure to implement certain sections. (1) Except as otherwise provided in 7-15-4416(2) and 7-15-4417 through 7-15-4419, all action authorized to be taken under 7-15-4416(2) and 7-15-4417 through 7-15-4419 by the council or other governing body of any city or of any municipality may be by resolution adopted by a majority of all the members of its council or other governing body.

(2) The resolution may be adopted at the meeting of the council or other governing body at which such resolution is introduced and shall take effect immediately upon such adoption, and no such resolution need be published or posted.

History: En. Sec. 5, Ch. 138, L. 1935; re-en. Sec. 5309.32, R.C.M. 1935; R.C.M. 1947, 35-139.

7-15-4421. Municipal housing authority to be nonprofit. It is hereby declared to be the policy of this state that:

(1) each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations; and

(2) no housing authority shall construct or operate any such project for profit or as a source of revenue to the city.

History: En. Sec. 5, Ch. 153, L. 1941; re-en. Sec. 5309.27F, R.C.M. 1935; R.C.M. 1947, 35-133(part).

7-15-4422. Authorization to dissolve housing authority. If, after the lapse of 2 years from the creation of a housing authority by the filing and recording in the office of the secretary of state of the application as provided in 7-15-4410, no housing project has been commenced and no contract has been signed by the council or the mayor on behalf of the municipality with the housing authority or United States housing authority providing for contributions by the municipality either in cash or by tax remissions or exemptions in aid or support of any such housing project, such housing authority may be dissolved as provided in 7-15-4423.

History: En. Sec. 1, Ch. 25, L. 1941; re-en. Sec. 5309.37, R.C.M. 1935; R.C.M. 1947, 35-146(part).

7-15-4423. Resolution to dissolve housing authority. (1) When a housing authority is subject to dissolution as provided in 7-15-4422, the council may, at any regular meeting of the council, without any previous notice, and in its discretion, adopt a resolution declaring that:

(a) dwelling accommodations in the city and surrounding area are such that there is no need for the construction of any housing project;

(b) the need for the creation of a housing authority no longer exists; and

(c) the same be disbanded and dissolved.

(2) The resolution shall be spread upon the minutes of the meeting of the council. Thereupon, a copy of the said resolution shall be duly certified by the mayor and city clerk and filed for record in the office of the secretary

of state, whereupon the housing authority shall be dissolved and all functions thereof cease and the commissioners thereof discharged from any further duties or powers.

History: En. Sec. 1, Ch. 25, L. 1941; re-en. Sec. 5309.37, R.C.M. 1935; R.C.M. 1947, 35-146(part).

7-15-4424 through 7-15-4430 reserved.

7-15-4431. Appointment of commissioners. (1) An authority shall consist of five commissioners appointed by the mayor, and he shall designate the first chairman. No commissioner may be a city official.

(2) The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).

7-15-4432. Term of office. (1) The commissioners who are first appointed shall be designated by the mayor to serve for terms of 1, 2, 3, 4, and 5 years, respectively, from the date of their appointment. Thereafter the term of office shall be 5 years.

(2) A commissioner shall hold office until his successor has been appointed and has qualified.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).

7-15-4433. Compensation of commissioners. A commissioner shall receive no compensation for his services, but he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).

7-15-4434. Vacancies. Vacancies shall be filled for the unexpired term.

History: En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).

7-15-4435. Control of conflict of interest. (1) No commissioner or employee of an authority shall acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.

(2) (a) If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority, and such disclosure shall be entered upon the minutes of the authority.

(b) Failure to so disclose such interest shall constitute misconduct in office.

History: En. Sec. 7, Ch. 140, L. 1935; re-en. Sec. 5309.7, R.C.M. 1935; R.C.M. 1947, 35-107.

7-15-4436. Removal of commissioners. The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

History: **En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part).**

7-15-4437. Right of obligee of authority to request removal of commissioner. (1) Any obligee of the authority may file with the mayor written charges that the authority is willfully violating any law of the state or any term, provision, or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least 10 days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within 15 days after receipt of such charges remove any commissioner of the authority who shall have been found to have acquiesced in any such willful violation.

(2) A commissioner shall be deemed to have acquiesced in a willful violation by the authority of a law of this state or of any term, provision, or covenant contained in a contract to which the authority is a party if, before a hearing is held on the charges against him, he shall not have filed a written statement with the authority of his objections to or lack of participation in such violation.

History: **En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part).**

7-15-4438. Record of removal proceedings. In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings, together with the charges made against the commissioners and the findings thereon.

History: **En. Sec. 8, Ch. 140, L. 1935; re-en. Sec. 5309.8, R.C.M. 1935; R.C.M. 1947, 35-108(part).**

7-15-4439. Conduct of business. (1) Three commissioners shall constitute a quorum.

(2) When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman.

(3) An authority may:

(a) employ a secretary (who shall be executive director), technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation;

(b) call upon the corporation counsel or chief law officer of the city for such legal services as it may require or employ its own counsel and legal staff;

(c) delegate to one or more of its agents or employees such powers or duties as it may deem proper.

History: **En. Sec. 5, Ch. 140, L. 1935; re-en. Sec. 5309.5, R.C.M. 1935; R.C.M. 1947, 35-105(part).**

7-15-4440. Certain laws controlling. (1) Insofar as the provisions of Chapter 140, Laws 1935, are inconsistent with the provisions of any other law, the provisions of Chapter 140, Laws 1935, shall be controlling.

(2) Insofar as the provisions of Chapter 193, Laws 1957, are inconsistent with the provisions of any other law, the provisions of Chapter 193, Laws 1957, shall be controlling.

History: **(1)En. Sec. 28, Ch. 140, L. 1935, re-en. Sec. 5309.27, R.C.M. 1935; Sec. 35-127, R.C.M. 1947; (2)En. Sec. 9, Ch. 193, L. 1957; Sec. 35-125.2, R.C.M. 1947; R.C.M. 1947, 35-125.2, 35-127.**

7-15-4441 through 7-15-4450 reserved.

7-15-4451. General powers of housing authority. (1) An authority shall exercise public powers and have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part and part 45, including the following powers in addition to others herein granted.

(2) An authority shall have power to:

(a) sue and be sued;

(b) have a seal and alter the same at pleasure;

(c) have perpetual succession;

(d) make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;

(e) make and from time to time amend and repeal bylaws and rules, not inconsistent with this part and part 45, to carry into effect the powers and purposes of the authority.

(3) In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this part and part 45.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4452. Exercise of powers. (1) An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this state, and for such purposes an authority may cause one or more corporations to be formed under the laws of this state or may acquire the capital stock of any corporation or corporations.

(2) Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4453. Strict compliance with laws and contracts required. The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this part and part 45 and the laws of the state and, in addition thereto, with each and every term, provision, and covenant in any contract of the authority to be kept or performed on its part.

History: En. Sec. 6, Ch. 140, L. 1935; re-en. Sec. 5309.6, R.C.M. 1935; R.C.M. 1947, 35-106.

7-15-4454. General powers related to housing programs. An authority shall have power to:

(1) determine where unsafe or unsanitary dwelling or housing conditions exist;

(2) study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning, and reconstruction of areas in which unsafe or unsanitary

dwelling or housing conditions exist and the providing of dwelling accommodations for persons of low income and to cooperate with any city, municipal, or regional planning agency;

(3) prepare, carry out, and operate housing projects;

(4) provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof;

(5) take over by purchase, lease, or otherwise any housing project located within its boundaries undertaken by any government;

(6) act as agent for the federal government in connection with the acquisition, construction, operation, and/or management of a housing project or any part thereof;

(7) arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening, or closing of streets, options, or property rights or for the furnishing of property or services in connection with a project;

(8) lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures, or facilities embraced in any housing project and to establish and revise the rents or charges therefor.

History: **En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).**

7-15-4455. Housing projects subject to planning, zoning, and building laws. All housing projects of an authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated.

History: **En. Sec. 13, Ch. 140, L. 1935; re-en. Sec. 5309.13, R.C.M. 1935; R.C.M. 1947, 35-113.**

7-15-4456. Low-rent housing for the elderly. (1) For the purpose of increasing the supply of low-rent housing for elderly families, an authority may develop, construct, and operate new housing or acquire, remodel, and operate existing housing in order to provide accommodations designed specifically for such elderly families.

(2) Notwithstanding the provisions of this or any other law, an authority, in respect to dwelling units suitable to the needs of elderly families, may extend a prior preference in occupancy to such elderly families.

History: **En. 35-103.1 by Sec. 2, Ch. 193, L. 1957; R.C.M. 1947, 35-103.1(part).**

7-15-4457. Federal financial assistance for low-rent housing for the elderly. (1) Any application of the authority for federal financial assistance for such housing for elderly families shall first be approved by the council by resolution duly adopted.

(2) An authority may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the authority.

History: **En. 35-103.1 by Sec. 2, Ch. 193, L. 1957; R.C.M. 1947, 35-103.1(part).**

7-15-4458. Investigatory powers of housing authority. (1) An authority shall have power to:

(a) investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions;

(b) enter upon any building or property in order to conduct investigations or to make surveys or soundings;

(c) conduct examinations and investigations and hear testimony and take proof under oath at public or private hearings on any matter material for its information;

(d) issue subpoenas requiring the attendance of witnesses or the production of books and papers and issue commissions for the examination of witnesses who are out of the state or unable to attend before the authority or excused from attendance.

(2) Any of the investigations or examinations provided for in this part and part 45 may be conducted by the authority, by a committee appointed by it and consisting of one or more commissioners, by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits, and issue subpoenas or commissions.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4459. Availability of housing authority findings and determinations. An authority shall have power to make available to such agencies, boards, or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4460. Powers of housing authority relating to acquisition and disposition of property. (1) An authority shall have power to:

(a) purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein from any person, firm, corporation, city, municipality, or government;

(b) acquire by eminent domain any real property, including improvements and fixtures thereon;

(c) sell, exchange, transfer, assign, or pledge any real or personal property or any interest therein to any person, firm, corporation, municipality, city, or government;

(d) own, hold, clear, and improve property;

(e) insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable;

(f) procure insurance or guarantees from the federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project.

(2) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4461. Acquisition of property by authority for government housing project. The authority may acquire, by purchase or by the exercise of its power of eminent domain as provided in 7-15-4462, any real or personal property for any housing project being constructed or operated by a government. The authority, upon such terms and conditions, with or without consideration, as it shall determine, may convey title or deliver possession of such property so acquired or purchased to such government for use in connection with such housing project.

History: En. Sec. 12, Ch. 140, L. 1935; re-en. Sec. 5309.12, R.C.M. 1935; R.C.M. 1947, 35-112.

7-15-4462. Exercise of power of eminent domain. (1) After the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use, the authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this part and part 45.

(2) The authority may exercise the power of eminent domain pursuant to the provisions of either:

(a) Title 70, chapter 30; or

(b) Any other applicable statutory provisions for the exercise of the power of eminent domain.

(3) Property already devoted to a public use may be acquired, provided that no property belonging to any city or municipality within the boundaries of the authority or to any government may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if there be any, having regulatory power over such corporation.

History: En. Sec. 11, Ch. 140, L. 1935; re-en. Sec. 5309.11, R.C.M. 1935; R.C.M. 1947, 35-111.

7-15-4463. Title to property acquired from housing authority subject to agreements with governments. Notwithstanding anything in this part or part 45 to the contrary, any purchaser or purchasers at a sale of real or personal property of the authority, whether pursuant to any foreclosure of a mortgage or pursuant to judicial process or otherwise, shall obtain title subject to any contract between the authority and a government relating to the supervision by a government of the operation and maintenance of such property and the construction of improvements thereon.

History: En. Sec. 22, Ch. 140, L. 1935; re-en. Sec. 5309.22, R.C.M. 1935; R.C.M. 1947, 35-122.

7-15-4464. Authorization for payment of rentals in lieu of taxes. (1) Any housing authority established pursuant to this part and/or the federal government may pay annual sums from rentals in lieu of taxes to any state and/or political subdivision thereof with respect to any real property, including improvements thereon, owned or held by either such housing authority or the federal government.

(2) The amount so paid for any year upon such property shall not exceed the taxes which would be paid to the state and/or subdivision thereof, as the case may be, upon such property if it were not exempt from taxation, with such allowances as may be considered to be appropriate for expenditures by

the government for streets, utilities, or other public services to serve such property.

History: En. Sec. 4, Ch. 215, L. 1943; R.C.M. 1947, 35-304.

7-15-4465. Payments by housing authorities to local and state bodies. Notwithstanding any limitations in this or any other law, any housing authority may agree to make such payments to the county, city, or municipality, the state or any political subdivision or agency thereof (which payments such bodies are hereby authorized to accept) as the authority finds consistent with the maintenance of the low-rent character of housing projects or the achievement of the purposes of this housing authorities law.

History: En. Sec. 35-125.1 by Sec. 7, Ch. 193, L. 1957; R.C.M. 1947, 35-125.1.

7-15-4466. Special powers and contract provisions when federal government involved. (1) In addition to the powers conferred upon the authority by other provisions of this part or part 45, the authority is empowered to:

(a) borrow money and/or accept grants from the federal government for or in aid of the construction of any housing project which such authority is authorized by this part or part 45 to undertake;

(b) take over any land acquired by the federal government for the construction of a housing project;

(c) take over or lease or manage any housing project constructed or owned by the federal government; and

(d) these ends, enter into such contracts, mortgages, trust indentures, leases, or other agreements as the federal government may require, including agreements that the federal government shall have the right to supervise and approve the construction, maintenance, and operation of such housing project.

(2) (a) In any contract with the federal government for annual contributions to an authority, the authority may obligate itself to convey to the federal government possession of or title to the project to which such contract relates upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the authority is subject. This obligation shall be specifically enforceable and shall not constitute a mortgage, notwithstanding any other laws.

(b) Such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project in accordance with the terms of such contract, provided that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the authority the project as then constituted.

(3) A housing authority shall have the power (notwithstanding anything to the contrary contained in this part or part 45 or in any other provision of law) to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of

not less than prevailing salaries or wages or compliance with labor standards in the development or administration of projects and to include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum salaries or wages and maximum hours of labor and comply with any conditions which the federal government may have attached to the financial aid of the project.

History: (1), (2)En. Sec. 23, Ch. 140, L. 1935; re-en. Sec. 5309.23, R.C.M. 1935; amd. Sec. 5, Ch. 193, L. 1957; Sec. 35-123, R.C.M. 1947; (3)En. Sec. 25, Ch. 140, L. 1935; re-en. Sec. 5309.25, R.C.M. 1935; amd. Sec. 4, Ch. 153, L. 1941; amd. Sec. 6, Ch. 193, L. 1957; Sec. 35-125, R.C.M. 1947; R.C.M. 1947, 35-123(part), 35-125.

7-15-4467. Reports by authority to municipality. The authority shall, at least once a year, file with the mayor of the city a report of its activities for the preceding year and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this part and part 45.

History: En. Sec. 26, Ch. 140, L. 1935; re-en. Sec. 5309.26, R.C.M. 1935; R.C.M. 1947, 35-126.

Part 45

Municipal Housing Authorities Continued

7-15-4501. Authorization to issue bonds. The authority shall have power and is hereby authorized to issue, from time to time in its descretion, for any of its corporate purposes:

(1) bonds on which the principal and interest are payable:

(a) exclusively from the income and revenues of the housing project financed with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in financing the construction thereof; or

(b) exclusively from the income and revenues of certain designated housing projects, whether or not they were financed in whole or in part with the proceeds of such bonds; provided, however, that the credit of the authority shall not be pledged to the payment of such bonds, but such bonds shall be payable only (and the bonds shall so state on their face) from the revenues of the designated housing project or projects and the funds received from the sale or disposal thereof and, if the authority so determines, shall be additionally secured by a trust indenture pledging such revenues or, in certain instances as hereinafter provided, by a mortgage of the property comprising such designated housing project or projects and the revenue therefrom;

(2) bonds for the payment of the principal and interest of which the credit of the authority is pledged and which may be additionally secured by a pledge of the revenues of the authority or any part thereof pursuant to a resolution or trust indenture of the authority or, in certain instances as hereinafter provided, may be additionally secured by a mortgage of the property and revenues of the authority or any part thereof.

History: En. Sec. 14, Ch. 140, L. 1935; re-en. Sec. 5309.14, R.C.M. 1935; R.C.M. 1947, 35-114(part).

7-15-4502. Powers related to loans. An authority shall have power:

(1) to borrow money upon its bonds, notes, debentures, or other evidences of indebtedness and to secure the same by pledges of its revenues and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it or in any other manner;

(2) in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects;

(3) in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this part and part 44;

(4) to invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which savings banks may legally invest funds subject to their control.

History: En. Sec. 9, Ch. 140, L. 1935; re-en. Sec. 5309.9, R.C.M. 1935; amd. Sec. 2, Ch. 68, L. 1953; amd. Sec. 4, Ch. 193, L. 1957; amd. Sec. 1, Ch. 259, L. 1974; R.C.M. 1947, 35-109(part).

7-15-4503. Nature of bonded indebtedness. (1) Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(2) The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city or municipality located within its boundaries or of the state, and neither the state nor any such city or municipality shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority.

(3) The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory provision of the laws of the state. Bonds may be issued under this part and part 44 notwithstanding any debt or other limitation prescribed by any statute.

History: En. Sec. 14, Ch. 140, L. 1935; re-en. Sec. 5309.14, R.C.M. 1935; R.C.M. 1947, 35-114(part).

7-15-4504. Bonds and other obligations to be fully negotiable. Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this part and part 44 shall be fully negotiable.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4505. Housing authority bonds as legal investments. (1) The state and all public officers, municipal corporations, political subdivisions, and public bodies; all banks, bankers, trust companies, savings banks and institutions, buildings and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority established pursuant to the housing authorities law of this state or issued by any public housing authority or agency in the United States when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof.

(2) It is the purpose of this section to authorize any persons, firms, corporations, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including but not limited to sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations.

(3) Nothing contained in this section shall be construed as relieving any person, firm, or corporation from any duty of exercising reasonable care in selecting securities.

(4) Insofar as the provisions of this section are inconsistent with the provisions of any other law, the provisions of this section shall be controlling.

History: En. Secs. 1, 3, Ch. 218, L. 1943; R.C.M. 1947, 35-143(part), 35-144.

7-15-4506. Details relating to bonds. (1) The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series.

(2) The bonds shall bear such date or dates, mature at such time or times (not exceeding 60 years from their respective dates), bear interest at such rate or rates, be in such denominations (which may be made interchangeable), be in such form (either coupon or registered), carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

(3) In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(a) covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage, or other instrument; as to the issuance of such bonds in escrow or otherwise; and as to the use and disposition of the proceeds thereof;

(b) covenant as to what other or additional debt may be incurred by it;

(c) provide for the terms, form, registration, exchange, execution, and authentication of bonds;

(d) provide for the replacement of lost, destroyed, or mutilated bonds;

(e) covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.

History: (1), (2)En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; Sec. 35-115, R.C.M. 1947; (3)En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; Sec. 35-116, R.C.M. 1947; R.C.M. 1947, 35-115(part), 35-116(part).

7-15-4507. Sale of bonds. (1) The bonds may be sold at public sale held after notice published once at least 10 days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of .... or in the city of .....

(2) Such bonds may be sold to the federal government at private sale without any public advertisement.

(3) The bonds may be sold at such price or prices as the authority shall determine.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4508. Purchase of bonds by housing authority. (1) The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled.

(2) This section shall not apply to the redemption of bonds.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4509. Interim certificates. Pending the authorization, preparation, execution, or delivery of definitive bonds, the authority may issue interim certificates or other temporary obligations to the purchaser of such bonds. Such interim certificates or other temporary obligations shall be in such form; contain such terms, conditions, and provisions; bear such date or dates; and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture, or mortgage determine.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4510. Validity and sufficiency of signatures on bonds. In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until such delivery.

History: En. Sec. 15, Ch. 140, L. 1935; re-en. Sec. 5309.15, R.C.M. 1935; amd. Sec. 37, Ch. 234, L. 1971; R.C.M. 1947, 35-115(part).

7-15-4511. Creation of special funds. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) create or authorize the creation of special funds in which there shall be segregated:

(a) the proceeds of any loan and/or grant;

(b) all of the rents, fees, and revenues of any housing project or projects or parts thereof;

(c) any money held for the payment of the costs of operation and maintenance of any such housing projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof;

(d) any money held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and

(e) any money held for any other reserves or contingencies; and

(2) covenant as to the use and disposal of the money held in such funds.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4512. Security for money deposited by housing authority. (1) The authority may by resolution provide that all money deposited by it shall be secured by:

(a) obligations of the United States or of the state of a market value equal at all times to the amount of such deposits;

(b) any securities in which savings banks may legally invest funds within their control; or

(c) an undertaking with such sureties as shall be approved by the authority to faithfully keep and pay over upon the order of the authority any such deposits and agreed interest thereon.

(2) All banks and trust companies are authorized to give any such security for such deposits.

History: En. Sec. 24, Ch. 140, L. 1935; re-en. Sec. 5309.24, R.C.M. 1935; R.C.M. 1947, 35-124.

7-15-4513 through 7-15-4520 reserved.

7-15-4521. General powers related to bonds and lease obligations. (1) In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or oligations, the authority shall have power to:

(a) execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those specified in 7-15-4506, 7-15-4511, and 7-15-4521 through 7-15-4528, as the government or any purchaser of the bonds of the authority may reasonably require;

(b) make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds or, in the absolute discretion of the authority, tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated herein;

(c) make covenants, other than in addition to the covenants expressly authorized in this part or part 44, of like or different character.

(2) It is the intention of subsection (1)(b) hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security, that are not inconsistent with the constitution of the state, and no consent or approval of any judge or court shall be required thereof; provided, however, that the authority shall have no power to mortgage all or any part of its real or personal property except as provided in 7-15-4526.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4522. Redemption of bonds. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to redeem the bonds and covenant for their redemption and provide the terms and conditions thereof.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4523. Amendment or abrogation of bond contracts. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4524. Bond provisions related to determination and use of rents and fees. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) pledge by resolution, trust indenture, mortgage (subject to the limitations imposed in this part), or other contract all or any part of its rents, fees, or revenues;

(2) covenant against pledging all or any part of its rents, fees, and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;

(3) covenant as to the rents and fees to be charged, as to the amount (calculated as may be determined) to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4525. Bond provisions related to management and use of property. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) covenant against mortgaging all or any part of its real or personal property, then owned or thereafter acquired, or against permitting or suffering any lien thereon;

(2) covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof or with respect to limitations on its right to undertake additional housing projects;

(3) provide for the release of property, rents, fees, and revenues from any pledge or mortgage and reserve rights and powers in or the right to dispose of property which is subject to a pledge or mortgage;

(4) covenant that the authority warrants the title to the premises;

(5) covenant as to the use of any or all of its real or personal property;

(6) covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance money.

History: En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).

7-15-4526. Power to mortgage property when government financing involved. (1) In connection with any project financed in whole or in part by a government, the authority shall also have power to mortgage all or any part of its real or personal property, then owned or thereafter acquired, and thereby:

(a) to vest in a government the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings so long as a government shall be the holder of any of the bonds secured by such mortgage;

(b) to vest in a trustee or trustees the right, upon the happening of an event of default (as defined in such mortgage), to foreclose such mortgage through judicial proceedings or through the exercise of a power of sale without judicial proceedings, but only with the consent of the government which aided in financing the housing project involved;

(c) to vest in other obligees the right to foreclose such mortgage by judicial proceedings, but only with the consent of the government which aided in financing the project involved;

(d) to vest in an obligee, including a government, the right in foreclosing any mortgage as aforesaid, to foreclose such mortgage as to all or such part or parts of the property covered thereby as such obligee in its absolute discretion shall elect.

(2) The institution, prosecution, and conclusion of any foreclosure proceedings authorized by subsection (1)(d) and/or the sale of any such parts of the mortgaged property shall not affect in any manner or to any extent the lien of the mortgage on the parts of the mortgaged property not included in such proceedings or not sold as aforesaid.

History: En. Sec. 17, Ch. 140, L. 1935; re-en. Sec. 5309.17, R.C.M. 1935; R.C.M. 1947, 35-117.

7-15-4527. Provisions related to breach or default on bonds and bond covenants. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power to:

(1) covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(2) vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant to be kept or performed on its part, to cure any such default and to advance any money necessary for such purpose, and the money so advanced may be made an additional obligation of the authority with such interest, security, and priority as may be provided in any trust indenture, mortgage, lease, or contract of the authority with reference thereto;

(3) covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(4) covenant to surrender possession of all or any part of any housing project or projects upon the happening of an event of default (as defined in the contract) and to vest in an obligee the right, without judicial proceedings, to take possession and to use, operate, manage, and control such housing projects or any part thereof and to collect and receive all rents, fees, and revenues arising therefrom in the same manner as the authority itself might

do and to dispose of the money collected in accordance with the agreement of the authority with such obligee.

History: **En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part).**

7-15-4528. Use of bond trustee. In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of the bonds and/or obligations, the authority may:

(1) vest in a trustee the right to enforce any covenant made to secure the payment of the bonds and/or obligations;

(2) provide for the powers and duties of the trustee and limit his liabilities; and

(3) provide the terms and conditions upon which the trustee or a designated proportion of the holders of bonds may enforce any covenant.

History: **En. Sec. 16, Ch. 140, L. 1935; re-en. Sec. 5309.16, R.C.M. 1935; R.C.M. 1947, 35-116(part); amd. Sec. 24, Ch. 253, L. 1979.**

7-15-4529. General remedies of an obligee of a housing authority. An obligee of the authority shall have the right, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) by mandamus, suit, action, or proceeding in law or equity (all of which may be joined in one action), to compel the authority and the commissioners, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any contract of the authority and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this part or part 44;

(2) by suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of the authority;

(3) by suit, action, or proceeding in any court of competent jurisdiction, to cause possession of any housing project or any part thereof to be surrendered to any obligee having the right to such possession pursuant to any contract of the authority.

History: **En. Sec. 18, Ch. 140, L. 1935; re-en. Sec. 5309.18, R.C.M. 1935; R.C.M. 1947, 35-118.**

7-15-4530. Special remedies of an obligee resulting from mortgage or trust indenture. (1) Any authority shall have power by its trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds, leases, or other obligations the right, upon the happening of an event of default as defined in such instrument:

(a) by suit, action, or proceeding in any court of competent jurisdiction, to obtain the appointment of a receiver of any housing project of the authority or any part or parts thereof;

(b) by suit, action, or proceeding in any court of competent jurisdiction, to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

(2) If a receiver is appointed pursuant to subsection (1)(a), he may enter and take possession of such housing project or any part of parts thereof and

operate and maintain the same and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such money in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

History: **En. Sec. 19, Ch. 140, L. 1935; re-en. Sec. 5309.19, R.C.M. 1935; R.C.M. 1947, 35-119.**

7-15-4531. Remedies of obligees to be cumulative. All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority.

History: **En. Sec. 20, Ch. 140, L. 1935; re-en. Sec. 5309.20, R.C.M. 1935; R.C.M. 1947, 35-120.**

7-15-4532. Limitations on remedies of obligees. (1) No interest of the authority in any real or personal property shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage, except in the case of the mortgages provided for in 7-15-4526.

(2) All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its real or personal property.

(3) The provisions of this section shall not apply to or limit the right of obligees to foreclose any mortgage of the authority provided for in 7-15-4526 and, in case of a foreclosure sale thereunder, to obtain a judgment or decree for any deficiency due on the indebtedness secured thereby and issued on the credit of the authority. Such deficiency judgment or decree shall be a lien and charge upon the property of the authority which may be levied on and sold by virtue of an execution or other judicial process for the purpose of satisfying such deficiency judgment or decree.

History: **En. Sec. 21, Ch. 140, L. 1935; re-en. Sec. 5309.21, R.C.M. 1935; R.C.M. 1947, 35-121.**

CHAPTER 16

CULTURE, SOCIAL SERVICES, AND RECREATION

Part 1 — General Provisions Affecting County Governments

Section

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Part 1

General Provisions Affecting Local Governments

7-16-101. Creation of funds for recreational and other activities of elderly by local governments. (1) The governing body of a city, county, town, or municipality may in its discretion establish a fund to promote, establish, and maintain recreational, educational, and other activities of the elderly by a levy of up to 1 mill on each dollar of taxable property, which tax levy shall be in addition to all other tax levies.

(2) The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine. Expenditures shall be made for the promotion and development of recreational, educational, and other activities of the elderly, including motivation of the use of the talents of the elderly.

(3) The governing body may make payment of expenditures to nonprofit corporations or associations engaged in aiding the activities.

History: **En. Sec. 1, Ch. 380, L. 1971; R.C.M. 1947, 71-1701.**

7-16-102. Use of county lands for public parks and recreational grounds. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a park or recreational grounds.

(2) The conveyance is subject to the provisions of 7-8-102.

History: En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).

Parts 2 through 20 reserved

Part 21

General Provisions Affecting County Government

7-16-2101. Construction and maintenance of county cultural, social, and recreational facilities. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a civic center, a youth center, park buildings, museums, recreation centers, and any combination thereof to be erected, furnished, and maintained.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-16-2102. Authorization for tax levy for certain cultural, social, and recreational facilities. (1) The board of county commissioners, after a county-owned civic center, youth center, recreation center, or any combination of two or more thereof has been established, may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a special tax, not to exceed 2 mills on each dollar of the taxable valuation for any one year, for the purpose of maintaining, operating, and equipping such county-owned civic center, youth center, recreation center, or any combination of two or more thereof.

(2) All laws applicable to the collection of county taxes shall apply to the collection of the tax provided herein.

History: En. Sec. 1, Ch. 45, L. 1955; amd. Sec. 1, Ch. 26, L. 1973; R.C.M. 1947, 16-1179(part).

7-16-2103. Establishment of civic-youth-recreation center fund. (1) All funds derived from the tax authorized by 7-16-2102, together with all revenue and income from such civic center, youth center, recreation center, or any combination of two or more thereof:

(a) shall constitute a separate fund called the civic-youth-recreation center fund;

(b) shall be deposited with the county treasurer; and

(c) shall not be used for any purposes except those of such civic center, youth center, recreation center, or any combination of two or more thereof.

(2) All claims against such separate fund shall be presented and acted upon in the same manner as are all other claims against the county.

History: En. Sec. 1, Ch. 45, L. 1955; amd. Sec. 1, Ch. 26, L. 1973; R.C.M. 1947, 16-1179(part).

7-16-2104. Multicounty youth guidance centers. Two or more counties of this state may, through action of their respective boards of county commissioners, join together by contract in the establishment of a joint county youth guidance center. The cost and expenses of such joint county youth guidance center shall be apportioned between or among the contracting counties on such a basis as to be agreed upon by said contracting counties.

History: En. Sec. 1, Ch. 24, L. 1961; R.C.M. 1947, 16-1008B.

7-16-2105. Acquisition of land by county for public recreational or cultural purposes. (1) The several counties of this state are hereby authorized and empowered to acquire, by purchase, grant, deed, gift, devise, condemnation, or otherwise, lands suitable for public camping and public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination thereof or may lease such land tracts, each of which shall be so situated as to offer ready access to a public highway.

(2) Nothing contained herein shall be construed as amending or repealing 7-16-2201 through 7-16-2205.

History: En. Sec. 1, Ch. 51, L. 1929; re-en. Sec. 4444.1, R.C.M. 1935; amd. Secs. 1, 2, Ch. 239, L. 1947; R.C.M. 1947, 62-101.

7-16-2106. Limitation on use of lands. All tracts of land acquired under 7-16-2105 shall be set aside and used exclusively for public camping and recreational purposes, and each park so established shall be given an appropriate name or number.

History: En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935; re-en. Sec. 4444.2, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1943; amd. Sec. 1, Ch. 115, L. 1945; amd. Sec. 1, Ch. 229, L. 1959; amd. Sec. 1, Ch. 75, L. 1974; R.C.M. 1947, 62-102(part).

7-16-2107. Expenditures for county parks. Except as otherwise provided by law, there are no restrictions on expenditures for the purpose of acquiring, maintaining, and equipping county parks.

History: En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935; re-en. Sec. 4444.2, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1943; amd. Sec. 1, Ch. 115, L. 1945; amd. Sec. 1, Ch. 229, L. 1959; amd. Sec. 1, Ch. 75, L. 1974; R.C.M. 1947, 62-102(part).

Part 22

County Museums

7-16-2201. Definition of term museums. For the purposes of this part, the word "museums" shall mean buildings or parts of buildings of which a principal purpose is the exhibition of objects of historical interest or of interest in one or more of the arts and sciences.

History: En. Sec. 1, Ch. 17, L. 1945; amd. Sec. 1, Ch. 173, L. 1975; R.C.M. 1947, 16-1163(part).

7-16-2202. Establishment and acquisition of museums. The board of county commissioners of each county of the state, in addition to all other powers now conferred upon them, shall have authority to establish or acquire museums, collections of exhibits, and articles, matters, and things to be included in or added to such museums and collections.

History: **En. Sec. 1, Ch. 17, L. 1945; amd. Sec. 1, Ch. 173, L. 1975; R.C.M. 1947, 16-1163(part).**

7-16-2203. Museum board of trustees — appointment and term. (1) The board of county commissioners of each county owning or acquiring any such museum or collection of exhibits may, at the first regular meeting of the board after acquiring any such museum or collection, appoint a board of trustees for such museum or collection.

(2) Such board shall consist of three responsible persons, electors and residents of the county. The term of one of said members shall expire on June 30 of the next following year, the term of another of said members shall expire on June 30 of the second following year, and the term of the third member to expire on June 30 of the third following year. Thereafter the board shall, at its regular meeting in July of each year, appoint a member of such board of trustees to take the place of the member whose term expired on June 30 immediately preceding.

History: **En. Sec. 3, Ch. 17, L. 1945; R.C.M. 1947, 16-1165(part).**

7-16-2204. Role of museum board of trustees. It shall be the duty of such board:

(1) to have the immediate custody, charge, and control of such museum or collection;

(2) to make such rules as may be necessary and reasonable for the preservation, upkeep, care, maintenance, operation, support, and display thereof; and

(3) to make to the board of county commissioners, not later than July 15 of each year:

(a) a report in writing, detailing all gifts and donations made to such museum or collection and the receipts and expenditures during the immediately preceding fiscal year; and

(b) an estimate of the amount to be budgeted for such museum or collection in the budget of the county for the then current fiscal year.

History: **En. Sec. 3, Ch. 17, L. 1945; R.C.M. 1947, 16-1165(part).**

7-16-2205. Authorization for mill levy for support of museums. (1) The board of county commissioners of any county owning or acquiring any such museum or collection of exhibits:

(a) may make an appropriation in its annual budget for the upkeep, care, maintenance, operation, and support thereof; and

(b) to meet and take care of such appropriation, may annually levy a tax of not to exceed 1 mill on each dollar of the taxable valuation of the property subject to taxation in the county.

(2) The levy shall be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of such levy shall be kept in a special fund by the county treasurer and used solely for the purpose for which such levy was made.

History: **En. Sec. 2, Ch. 17, L. 1945; amd. Sec. 2, Ch. 173, L. 1975; R.C.M. 1947, 16-1164.**

Part 23

County Board of Park Commissioners

7-16-2301. Authorization for county board of park commissioners. (1) There may be created in all counties a board of park commissioners.

(2) Such board shall constitute a department of the county government with the powers provided in this part.

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).**

7-16-2302. Composition of park board. The board of park commissioners shall be composed of the county commissioners and six other persons appointed by the county commissioners.

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).**

7-16-2303. Qualifications of park commissioners. The six persons to be so appointed shall have the same qualifications for the office of park commissioner as are required by 7-4-2201, for the office of county commissioner.

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).**

7-16-2304. Term of office. (1) Except as provided in subsection (2), the term of office of each park commissioner shall be 3 years with and after the first Monday of May of the year in which he is appointed and until his successor is appointed and qualified.

(2) Two of the commissioners first appointed shall hold office for the period of 1 year, two for 2 years, and two for 3 years with and after the first Monday of May and until their successors are appointed and qualified.

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).**

7-16-2305. Automatic vacation of office. Any park commissioner who shall refuse or neglect for a period of 3 consecutive months to attend the meetings of said board without leave of absence from said board or who shall fail for a period of 20 days from and after his appointment to qualify as provided in this part shall be deemed to have vacated his office, and thereupon, his successor may be appointed.

History: **En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; R.C.M. 1947, 16-4804(part).**

7-16-2306. Compensation of park commissioners. No park commissioner shall receive compensation for his services rendered under the provisions of this part, but the actual and necessary expense incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board.

History: **En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; R.C.M. 1947, 16-4804(part).**

7-16-2307. Oath of office. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe to the oath provided by 2-16-211. The oath shall be filed in the office of the county clerk and recorder.

History: **En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).**

7-16-2308. Organization of park board. On the first Monday of May in each year, said board of park commissioners shall meet and organize by electing one of their number president and one of their number vice-president, who shall hold their offices, respectively, for the term of 1 year.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).

7-16-2309. Duties of board officers. The president and, in his absence, the vice-president shall preside at all meetings of the board and shall countersign all warrants issued by the board.

History: En. Sec. 1, Ch. 306, L. 1967; amd. Sec. 1, Ch. 290, L. 1971; R.C.M. 1947, 16-4801(part).

7-16-2310. Clerk of board of park commissioners. (1) The board of park commissioners shall have the power to employ a secretary, not a member of the board, who shall be the clerk of the board of park commissioners and attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided by it for that purpose, to be called proceedings of the board of park commissioners of (entitled) county.

(2) It shall be the duty of the secretary to keep an accurate account of all transactions of said board and to make and submit in writing to said board at its first meeting in May in each year a report under oath showing in detail all the receipts and disbursements made by the board during the previous calendar year. The report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the county clerk and recorder and one in the office of the county treasurer. The secretary shall perform such other services as the board from time to time shall require.

(3) In the absence of the secretary at any meeting held by the board, it shall designate one of its members as clerk pro tem to keep the minutes of said meeting, which minutes shall be delivered to the secretary to be transcribed into the record book of said board.

History: En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(part).

7-16-2311. Evidentiary effect of park board minutes. The minutes of said meeting in said record book, when approved by the board, shall be prima facie evidence of the matters and things there recited in any court in this state.

History: En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(part).

7-16-2312. County park superintendent. The board of park commissioners shall have the power to employ a park superintendent, who may also be the secretary of the park board and who shall attend each regular meeting of the said board and report, either in writing or orally as the board may require, as to the activities, functions, and progress of whatever nature pertaining to the park lands and facilities over which he has supervision. The duties of the park superintendent shall be of a managerial capacity.

History: En. Sec. 5, Ch. 290, L. 1971; R.C.M. 1947, 16-4801.1(2).

7-16-2313. Conduct of park board business. (1) The board of park commissioners shall hold an annual meeting on the first Monday of May and a meeting at least once in each month in each year at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president or, in his absence, the vice-president, upon giving to each member of said board at least 24 hours' notice in writing of the time and place of holding such meeting. A member of the board by his appearance at a special meeting shall waive the requirement of written notice.

(2) A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board.

History: Ap. p. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; Ap. p. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part).

7-16-2314. Control of conflict of interest and nepotism. (1) No park commissioner, directly or indirectly, shall be interested in or benefit by any contract made by the board or by its authority or in the furnishing of any supplies for the use of the board.

(2) The laws of nepotism shall apply to employment under this part.

History: (1)En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; (2)En. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part).

7-16-2315 through 7-16-2320 reserved.

7-16-2321. Powers and duties of park board. A county park board, in addition to powers and duties now given under law, shall have the following powers and duties:

(1) to acquire by gift, grant, purchase, lease, or condemnation lands or facilities within or without the limits of corporate municipalities for parks, playgrounds, recreation areas, swimming pools, athletic fields, skating rinks, museums, zoos, golf courses, camps, multipurpose buildings for civic centers, fieldhouses, gymnasiums, youth centers, libraries, reading and meeting rooms, or combinations thereof;

(2) to furnish and equip and manage and control the same, including establishment by resolution of reasonable and uniform charges for the privilege of using the same;

(3) to lay out, establish, improve, and maintain grounds, parkways, drives, and walks in the parks and recreation areas of the county, make plats thereof and file the same in the office of the county clerk, and determine when and what parks and recreation areas shall be opened to the public;

(4) to pay all obligations authorized to be incurred by the provisions of this part;

(5) to exercise all other powers incident to the duties enjoined by the provisions of this part.

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part).

7-16-2322. Rules to implement part. (1) A county park board, in addition to powers and duties now given under law, shall have the following powers and duties:

(a) to make all rules necessary or convenient to protect and promote the improvement of land and facilities under the care and control of said board and for the protection of birds and animals inhabiting or frequenting land and facilities in parks and public places;

(b) to make all rules for the use of land and facilities by the public; and

(c) to provide penalties for the violation of such rules.

(2) The rules authorized by this section shall have the force of resolutions of the county commissioners.

History: **En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part).**

7-16-2323. Leasing of county land for nonpark purposes. A county park board, in addition to powers and duties now given under law, shall have the power and duty to lease lands owned by the county, heretofore acquired for parks, which, in the judgment of the board, it shall not be advisable to improve as parks, upon such terms and conditions as the board shall deem to be for the best interests of the county. Such lands shall not be leased for a longer time than 5 years and not for a longer time than 1 year without the concurrence of two-thirds of the entire board of park commissioners.

History: **En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part).**

7-16-2324. Sale, lease, or exchange of dedicated park lands. (1) For the purposes of this section and part 25 of chapter 8, lands dedicated to the public use for park or playground purposes under 76-3-606 and 76-3-607 or a similar statute or pursuant to any instrument not specifically conveying land to a governmental unit other than a county are considered county lands.

(2) A county may not sell, lease, or exchange lands dedicated for park or playground purposes except as provided under this section and part 25 of chapter 8.

(3) Prior to selling, leasing, or exchanging any county land dedicated to public use for park or playground purposes, a county shall:

(a) compile an inventory of all public parks and playgrounds within the county;

(b) prepare a comprehensive plan for the provision of outdoor recreation and open space within the county;

(c) determine that the proposed sale, lease, or exchange furthers or is consistent with the county's outdoor recreation and open space comprehensive plan;

(d) publish notice of intention to sell, lease, or dispose of such lands, giving the people of the county opportunity to be heard regarding such action;

(e) if the land is within an incorporated city or town, secure the approval of the governing body thereof for the action; and

(f) comply with any other applicable requirements under part 25 of chapter 8.

(4) Any revenue realized by a county from the sale, exchange, or disposal of lands dedicated to public use for park or playground purposes shall be paid into the park fund and used in the manner prescribed in 76-3-606 and 76-3-607 for cash received in lieu of dedication.

History: **En. 16-4808 by Sec. 5, Ch. 540, L. 1975; R.C.M. 1947, 16-4808; amd. Sec. 25, Ch. 253, L. 1979.**

7-16-2325. Power of park board to employ persons and to make contracts. (1) A county park board, in addition to powers and duties now given under law, shall have the following powers and duties:

(a) to employ and discharge workmen, laborers, engineers, foresters, and others and to fix their compensation;

(b) to make all contracts necessary or convenient for carrying out any and all of the powers conferred and duties enjoined upon said board by this part.

(2) All contracts made by said board shall be in the name of the county and shall be signed by the president or, in his absence, by the vice-president of said board, or upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with due notice and report being made to the board of county commissioners, such contracts may be signed by the chairman of the board of county commissioners and attested by the county clerk and recorder.

(3) No order or resolution authorizing the making of any contract shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes of the secretary.

History: (1)En. Sec. 2, Ch. 306, L. 1967; Sec. 16-4802, R.C.M. 1947; (2)En. Sec. 4, Ch. 306, L. 1967; amd. Sec. 3, Ch. 290, L. 1971; Sec. 16-4804, R.C.M. 1947; (3)En. Sec. 5, Ch. 306, L. 1967; amd. Sec. 4, Ch. 290, L. 1971; Sec. 16-4805, R.C.M. 1947; R.C.M. 1947, 16-4802(part), 16-4804(part), 16-4805(part).

7-16-2326. Discrimination in employment prohibited. No contract of employment may be entered into except in compliance with federal and state statutes, orders, and rules providing that there may be no discrimination in employment.

History: En. Sec. 6, Ch. 306, L. 1967; amd. Sec. 3, Ch. 38, L. 1977; R.C.M. 1947, 16-4806; amd. Sec. 26, Ch. 253, L. 1979.

7-16-2327. Indebtedness for park purposes. (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, shall have the power and duty to contract an indebtedness in behalf of a county, upon the credit thereof, for the purposes of 7-16-2321(1) and (2).

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed 13% of the taxable value of the taxable property in the county ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(b) No money may be borrowed on bonds issued for the purchase of lands and improving same for any such purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at such election in the county affected thereby and a majority vote is cast in favor thereof.

History: En. Sec. 2, Ch. 306, L. 1967; R.C.M. 1947, 16-4802(part); amd. Sec. 54, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "must not at any time exceed 13% of the taxable value of the taxable property in the county" for "must not at any time exceed 3% of the value of the taxable property of the county" in (2)(a); and substituted "No money may" for "No money must" at the beginning of (2)(b).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-16-2328. Park fund to be maintained. All money raised by tax for park purposes or received by the board of park commissioners from the sale of hay, trees, or plants or from the use of or leasing of lands and facilities shall be paid into the county treasury. The county treasurer shall keep all such money in a separate fund to be known as the park fund.

History: **En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part).**

7-16-2329. Limitation on incurred liability. The board of park commissioners shall have no power to incur liability on behalf of the county in excess of money on hand in or taxes actually levied for said park fund.

History: **En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part).**

7-16-2330. Allowance of claims. (1) Subject to the provisions of subsection (2), the board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the county, liability for which shall have been incurred by said board.

(2) No claim shall be audited or paid until an itemized account of such claim, in writing and signed by the claimant or his or its authorized agent, shall have been filed in the office of the secretary of said board.

(3) No order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of $25 shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes of the secretary.

History: **En. Sec. 5, Ch. 306, L. 1967; amd. Sec. 4, Ch. 290, L. 1971; R.C.M. 1947, 16-4805(part).**

7-16-2331. Disbursement of money. All money paid out by the park commissioners under the provisions of this part shall be by warrant drawn upon the county treasury, which may be signed by the secretary and countersigned by the president or, in his absence, by the vice-president of the board of park commissioners. Upon approval by a majority of the members of the board of park commissioners at a regular meeting of the board at which a quorum is in attendance and voting and with due notice and report being made to the board of county commissioners, payments so authorized may be made by warrant drawn upon the county treasury, signed by the chairman of the board of county commissioners and countersigned by the county clerk and recorder.

History: **En. Sec. 3, Ch. 306, L. 1967; amd. Sec. 2, Ch. 290, L. 1971; R.C.M. 1947, 16-4803(part); amd. Sec. 27, Ch. 253, L. 1979.**

7-16-2332. Acceptance of federal aid authorized. The park commissioners shall have authority to accept grants or loans from the United States government, subject to agreements in conformance to federal laws and regulations relating thereto, notwithstanding any provision of this part or other state statutes to the contrary.

History: **En. Sec. 7, Ch. 306, L. 1967; R.C.M. 1947, 16-4807.**

Parts 24 through 40 reserved

Part 41

General Provisions Affecting Municipal Government

7-16-4101. Municipal authority to establish, alter, and maintain parks. The city or town council has power to lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve parks and to vacate the same.

History: En. Subd. 6, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.5, R.C.M. 1935; R.C.M. 1947, 11-906(part).

7-16-4102. Planting and protection of trees. The city or town council has power to provide for the planting of trees and the protection of the same.

History: En. Subd. 59, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.58, R.C.M. 1935; R.C.M. 1947, 11-961.

7-16-4103. Authorization to establish various cultural, social, and recreational facilities. (1) All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, may in their discretion procure, construct, establish, maintain, and operate swimming pools, skating rinks, playgrounds, civic centers, youth centers, and museums and defray the cost and expense of procuring, constructing, establishing, equipping, maintaining, and operating the same from the funds of said city or town raised for such purposes.

(2) Power and authority is hereby granted to the city or town council of all cities and towns incorporated under the laws of Montana to make and pass all bylaws, ordinances, resolutions, rules, and orders necessary for the procurement, establishment, equipment, maintenance, regulation, and operation of swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combinations thereof, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using the same.

(3) Said city or town council is further authorized in its discretion to place any or all of said institutions under the control and management of the board of park commissioners.

History: (1)En. Sec. 1, Ch. 41, L. 1917; re-en. Sec. 5166, R.C.M. 1921; re-en. Sec. 5166, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1941; amd. Sec. 2, Ch. 71, L. 1945; Sec. 62-208, R.C.M. 1947; (2), (3)En. Sec. 2, Ch. 41, L. 1917; re-en. Sec. 5167, R.C.M. 1921; re-en. Sec. 5167, R.C.M. 1935; amd. Sec. 2, Ch. 60, L. 1941; amd. Sec. 3, Ch. 71, L. 1945; Sec. 62-209, R.C.M. 1947; R.C.M. 1947, 62-208, 62-209.

7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes. (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit thereof, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise swimming pools, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or combination thereof; and

(c) for furnishing and equipping the same.

(2) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 16.5% of the taxable value of the taxable property of the city or town as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. No money may be borrowed on bonds issued for the purchase of lands and improving the same for any such purpose until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor thereof.

History: En. Sec. 1, Ch. 55, L. 1909; re-en. Sec. 5159, R.C.M. 1921; amd. Sec. 1, Ch. 114, L. 1923; re-en. Sec. 5159, R.C.M. 1935; amd. Sec. 1, Ch. 71, L. 1945; amd. Sec. 1, Ch. 64, L. 1947; R.C.M. 1947, 62-201; amd. Sec. 28, Ch. 253, L. 1979; amd. Sec. 55, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "may not at any time exceed 16.5% of the taxable value" for "may not at any time exceed 3% of the value" in (2).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-16-4105. Authorization to levy tax for various cultural, social, and recreational facilities. For the purpose of procuring, equipping, and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combinations thereof, the council or commission in any city or town may levy, in addition to the levy for general municipal or administrative purposes, an amount not exceeding 7 mills on the dollar on the taxable value of the property to be taxed of the city or town.

History: En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M. 1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part).

7-16-4106. Acquisition of property for athletic fields and civic stadiums. (1) Every city or town council shall have power to:

(a) acquire by gift, purchase, or condemnation lands for athletic fields and civic stadiums within or without the corporate limits of the municipality;

(b) establish and regulate such fields and civic stadiums;

(c) exercise municipal jurisdiction over the lands so acquired where such lands or any portion thereof are without the corporate limits of the municipality to the same extent as though they were within said corporate limits; and

(d) construct, maintain, and regulate athletic and civic stadiums thereon.

(2) The city or town councils are authorized to set aside or designate portions or tracts of land now owned by any municipality for the purpose of providing athletic fields and civic stadiums.

History: **En. Sec. 1, Ch. 68, L. 1929; re-en. Sec. 5167.1, R.C.M. 1935; R.C.M. 1947, 62-210.**

7-16-4107. Use of park funds for public recreation. (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

History: **En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 29, Ch. 253, L. 1979.**

7-16-4108. Operation of public recreation programs. (1) Any city, town, or school district or any board thereof, including any board of park commissioners, may operate such a program independently or may cooperate in its operation and conduct with any other body authorized hereby to conduct such a program in any manner upon which they may mutually agree, or it or they may delegate the operation of the program to a board of recreation created by any city, town, or school district or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all money appropriated for the purposes of such program may be expended by such board.

(2) Any corporation, board, or body designated in this section, given authority to operate and conduct a recreation program or given charge of such program, is authorized to employ directors and instructors of said recreational work and to conduct its activities on:

(a) property under its custody and management;

(b) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and

(c) private property, with the consent of its owners.

History: **(1)En. Sec. 2, Ch. 71, L. 1939; Sec. 62-212, R.C.M. 1947; (2)En. Sec. 3, Ch. 71, L. 1939; Sec. 62-213, R.C.M. 1947; R.C.M. 1947, 62-212, 62-213(part).**

7-16-4109. Gifts and bequests for public recreation. Any corporation, board, or body designated in 7-16-4108, given authority to operate and conduct a recreation program or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work.

History: **En. Sec. 3, Ch. 71, L. 1939; R.C.M. 1947, 62-213(part).**

7-16-4110. Establishment and maintenance of public baths. (1) All cities or towns incorporated under the laws of the state of Montana, in addition to other powers conferred upon them, are hereby empowered and authorized to establish and maintain a public bathing place within said city or town.

(2) Power is hereby granted to the city or town council of all cities and towns incorporated under the laws of the state of Montana to make and pass all bylaws, ordinances, resolutions, and orders necessary for the establishment, maintenance, and regulation of a public bathing place within said city or town, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using said bathing place.

History: **En. Secs. 1, 2, Ch. 12, L. 1905; re-en. Secs. 3294, 3295, Rev. C. 1907; re-en. Secs. 5045, 5046, R.C.M. 1921; re-en. Secs. 5045, 5046, R.C.M. 1935; R.C.M. 1947, 11-1008(part), 11-1009.**

7-16-4111. Financing of public baths. To defray the cost and expense of maintaining the public bathing place authorized by 7-16-4110, a city or town may contract an indebtedness upon behalf of the city or town and upon the credit thereof by borrowing money or issuing bonds. No money may be borrowed and no bonds may be issued until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast therefor.

History: **En. Sec. 1, Ch. 12, L. 1905; re-en. Sec. 3294, Rev. C. 1907; re-en. Sec. 5045, R.C.M. 1921; re-en. Sec. 5045, R.C.M. 1935; R.C.M. 1947, 11-1008(part); amd. Sec. 30, Ch. 253, L. 1979.**

7-16-4112. Presentation of public band concerts. (1) Cities of the first, second, and third class, as defined by the laws of Montana, and incorporated towns may at their discretion provide public band concerts for the entertainment of their people and to pay therefor out of any money in a fund to be provided in accordance with the provisions of 7-16-4113.

(2) Said band concerts and entertainment shall be given at a place or places and at a time or times to be designated by the city council; provided, however, that said band concerts shall be given not more than twice each week. No band shall be employed in connection with the giving of said band concerts except one having its headquarters in the city or town in which said band concert is given.

History: **En. Sec. 1, Ch. 23, L. 1917; amd. Sec. 1, Ch. 167, L. 1921; re-en. Sec. 5047, R.C.M. 1921; re-en. Sec. 5047, R.C.M. 1935; R.C.M. 1947, 11-1010.**

7-16-4113. Tax levy for band concerts. For the purpose of providing band concerts, the council or other governing body in any city of the first, second, or third class or of any incorporated town may assess and levy, in addition to the levy for general municipal or administrative purposes, an amount not to exceed 1 mill on the dollar on the taxable value of the property of the city or town subject to taxation.

History: **En. Sec. 2, Ch. 167, L. 1921; re-en. Sec. 5048, R.C.M. 1921; re-en. Sec. 5048, R.C.M. 1935; amd. Sec. 23, Ch. 566, L. 1977; R.C.M. 1947, 11-1011.**

7-16-4114. Authorization to levy tax and establish fund for establishment and maintenance of day-care facilities. (1) The governing body of a city, town, or municipality may in its discretion establish a fund to establish and maintain licensed day-care centers and homes within the geographic boundaries of the governing body by a levy of up to 1 mill on each dollar of taxable property of said governing body. The tax levy shall be in addition to all other tax levies.

(2) The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine, provided that expenditures shall be made solely for the establishment, maintenance, and development of day-care centers and homes.

History: **En. 10-802.1 by Sec. 1, Ch. 392, L. 1973; R.C.M. 1947, 10-802.1.**

Part 42

Municipal Board of Park Commissioners

7-16-4201. Authorization for municipal board of park commissioners. (1) There may be created in all cities of the first and second class a board of park commissioners, whether such cities be a council form of government or city-manager form.

(2) Such board of park commissioners shall constitute a department of the city government with the powers provided in this part.

History: **En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).**

7-16-4202. Composition of park board. The board of park commissioners shall be composed of the mayor or city manager of the city and six other persons to be appointed by the mayor or city manager of the city with the approval of the city council.

History: **En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).**

7-16-4203. Qualifications of park commissioners. The six persons to be so appointed shall have the same qualifications for the office of park commissioner as are required by 7-4-4301 for the office of mayor.

History: **En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part); amd. Sec. 31, Ch. 253, L. 1979.**

7-16-4204. Term of office. (1) Except as provided in subsection (2), the term of office of each park commissioner shall be 2 years from and after the first day of May of the year in which he is appointed and until his successor is appointed and qualified.

(2) Three of the commissioners first appointed shall hold office for the period of 1 year from and after the first day of May and until their successors are appointed and qualified.

History: **En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).**

7-16-4205. Automatic vacation of office. Any park commissioner who shall refuse or neglect for a period of 3 consecutive months to attend the meetings of said board without leave of absence from said board or who shall fail for a period of 20 days from and after his appointment to qualify as provided in this part shall be deemed to have vacated his office, and thereupon, his successor may be appointed.

History: **En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).**

7-16-4206. Compensation of park commissioners. No park commissioner shall receive compensation for his services rendered under the provisions of this part, but the actual and necessary expenses incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board.

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).

7-16-4207. Oath of office. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe the oath provided by 2-16-211. The oath shall be filed in the office of the city clerk.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4208. Organization of park board. (1) On the first Monday in May in each year, said board of park commissioners shall meet and organize by electing one of their number president and one of their number vice-president, who shall hold their offices, respectively, for the term of 1 year.

(2) The city clerk shall be ex officio clerk of the board of park commissioners.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4209. Duties of board officers. (1) The president and, in his absence, the vice-president shall preside at all meetings of the board and shall countersign all warrants issued by the board and perform such other duties as shall be required and directed by the board.

(2) The city clerk, as ex officio clerk of the board of park commissioners, shall attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called the record of the board of park commissioners of the city of ..... It shall be the duty of the city clerk as such clerk of the board of park commissioners to keep an accurate account of all transactions of said board separate from other city accounts and to make and submit in writing to said board at the first meeting in January in each year a report under oath showing in detail all the receipts and disbursements made by the board during the year. The report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the city clerk and one in the office of the city treasurer. The city clerk shall perform such other services as the board shall require. In the absence of the clerk at any meeting held by the board, it shall designate one of its number as clerk pro tem to keep the minutes of said meeting, which minutes shall be delivered to the clerk to be transcribed into the record book of said board.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4210. Evidentiary effect of park board minutes. The minutes of said meeting contained in said record book, when approved by the board, shall be prima facie evidence of the matters and things therein recited in any court of this state.

History: En. Sec. 1, p. 73, L. 1901; re-en. Sec. 3318, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1913; re-en. Sec. 5161, R.C.M. 1921; re-en. Sec. 5161, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1939; R.C.M. 1947, 62-203(part).

7-16-4211. Conduct of park board business. (1) Said board of park commissioners shall hold an annual meeting on the first Monday of May and a meeting at least once in each month in each year at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president or, in his absence, the vice-president, upon giving to each member of said board at least 24 hours' notice in writing of the time and place of holding such meeting.

(2) A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board.

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).

7-16-4212. Control of conflict of interest. No park commissioner shall be interested in any contract made by the board or by its authority or in the furnishing of any supplies for the use of the board.

History: En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; R.C.M. 1947, 62-206(part).

7-16-4213 through 7-16-4220 reserved.

7-16-4221. Powers and duties of park board. (1) The board of park commissioners shall have the management and control of all parks belonging to the city and of all trees and other plants upon the streets, avenues, boulevards, and public places within the city and the right to designate the character and quality of all trees and plants planted in such parks, streets, avenues, boulevards, and public places.

(2) Said board of park commissioners shall have the following powers and be charged with the following duties:

(a) to lay out, establish, improve, and maintain parkways, drives, and walks in the parks of the city; to make plats thereof; to file the same in the office of the city clerk; and to determine when and what parks shall be opened to the public;

(b) to plant, cultivate, maintain, and improve all trees and other plants required to be planted, cultivated, and maintained in the parks belonging to the city and in the streets, avenues, boulevards, and public places in the city and for that purpose to establish and maintain nurseries for the growth of trees and plants;

(c) to pay all obligations authorized to be incurred by the provisions of this part;

(d) to exercise all other powers incident to the duties enjoined by the provisions of this part.

History: En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(part).

7-16-4222. Rules to implement part. (1) The board of park commissioners shall have the following powers and be charged with the following duties:

(a) to make all rules necessary or convenient to protect and promote the growth of trees and plants in parks, streets, avenues, alleys, boulevards, and public places under the care and control of said board and for the protection of all birds inhabiting, frequenting, or nesting in such parks, streets, avenues, boulevards, and public places;

(b) to make all rules for the use of parks by the public; and

(c) to provide penalties for the violation of such rules.

(2) The rules authorized by this section shall have the force of city ordinances and be enforced in like manner as ordinances of the city are enforced.

History: En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(3).

7-16-4223. Leasing of municipal land for nonpark purposes. The board of park commissioners shall have the power and be charged with the duty to lease all lands owned by the city heretofore acquired for parks, whether within or without the city, which, in the judgment of the board, it shall not be advisable to improve as parks, upon such terms and conditions as the board shall deem to be for the best interests of the city. Such lands shall not be leased for a longer term at any one time than 5 years and not for a longer time than 1 year without the concurrence of two-thirds of the entire board of park commissioners.

History: En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; R.C.M. 1947, 62-204(5).

7-16-4224. Power of park board to employ persons and to make contracts. (1) The board of park commissioners shall have the following powers and be charged with the following duties:

(a) to employ and discharge workmen, laborers, engineers, foresters, and others and to fix their compensation, which shall not be less than the union scale of wages in force in each individual city of the first class; and

(b) to make all contracts necessary or convenient for carrying out any and all of the powers conferred and duties enjoined upon said board by this part.

(2) All contracts made by said board shall be in the name of the city and shall be signed by the city clerk and by the president or, in his absence, by the vice-president of said board.

(3) No order or resolution authorizing the making of any contract shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes by the clerk.

History: (1)En. Sec. 2, p. 75, L. 1901; re-en. Sec. 3319, Rev. C. 1907; re-en. Sec. 5162, R.C.M. 1921; re-en. Sec. 5162, R.C.M. 1935; Sec. 62-204, R.C.M. 1947; (2)En. Sec. 4, p. 77, L. 1901; re-en. Sec. 3321, Rev. C. 1907; re-en. Sec. 5164, R.C.M. 1921; re-en. Sec. 5164, R.C.M. 1935; Sec. 62-206, R.C.M. 1947; (3)En. Sec. 6, p. 78, L. 1901; re-en. Sec. 3323, Rev. C. 1907; re-en. Sec. 5165, R.C.M. 1921; re-en. Sec. 5165, R.C.M. 1935; Sec. 62-207, R.C.M. 1947; R.C.M. 1947, 62-204(part), 62-206(part), 62-207(part).

7-16-4225. Park fund to be maintained. All money raised by tax for park purposes or received by the board of park commissioners for the sale of hay, trees, or plants; from the leasing of park lands; or from any other source shall be paid into the city treasury. The city treasurer shall keep all such money in a separate fund to be known as the park fund.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part).

7-16-4226. Limitation on incurred liability. The board of park commissioners shall have no power to incur liability on behalf of the city in excess of money on hand in or taxes actually levied for said park fund.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part).

7-16-4227. Allowance of claims. (1) Subject to the provisions of subsection (2), said board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the city, liability for which shall have been incurred by said board.

(2) No claim shall be audited or paid until an itemized account of such claim, in writing and verified by the oath of the claimant or his or its authorized agent, shall have been filed in the office of the clerk of said board.

(3) No order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of $25 shall be passed or adopted except by a yea and nay vote, which vote shall be recorded in full in the minutes by the clerk.

History: En. Sec. 6, p. 78, L. 1901; re-en. Sec. 3323, Rev. C. 1907; re-en. Sec. 5165, R.C.M. 1921; re-en. Sec. 5165, R.C.M. 1935; R.C.M. 1947, 62-207(part).

7-16-4228. Disbursement of money. All money paid out by the park commissioners under the provisions of this part shall be by warrant drawn upon the city treasury, which shall be signed by the city clerk and countersigned by the president or, in his absence, by the vice-president of the board of park commissioners.

History: En. Sec. 3, p. 76, L. 1901; re-en. Sec. 3320, Rev. C. 1907; re-en. Sec. 5163, R.C.M. 1921; re-en. Sec. 5163, R.C.M. 1935; R.C.M. 1947, 62-205(part); amd. Sec. 32, Ch. 253, L. 1979.

Part 43

Municipal Winter Work Program

7-16-4301. Definitions. As used in this part, the following definitions apply:

(1) "Winter work program" means a program to promote and encourage the accomplishment of work that would alleviate the rolls of the unemployed during the winter months.

(2) "Winter work committee" is a local committee appointed to effect the program.

History: En. Sec. 1, Ch. 68, L. 1965; R.C.M. 1947, 41-1901.

7-16-4302. Authorization to appoint winter work committee. The mayor of any municipality may appoint a winter work committee composed of at least five members.

History: En. Sec. 2, Ch. 68, L. 1965; R.C.M. 1947, 41-1902(part).

7-16-4303. Composition of committee. The members of the winter work committee shall be from various economic groups, including labor, industry, business, welfare, and the news media. In municipalities where the economic groups are represented by organizations, the mayor shall give notice to each organization that he is going to make the appointments and shall set a date by which names must be submitted. On the date set for submittal, he shall select one member from each of the economic groups.

History: En. Sec. 2, Ch. 68, L. 1965; R.C.M. 1947, 41-1902(part).

7-16-4304. Terms of committee members. Original appointments shall be for 5, 4, 3, 2, and 1 years. The original terms shall be determined by lot. After the original appointments have expired, terms shall be for 5 years.

History: **En. Sec. 3, Ch. 68, L. 1965; R.C.M. 1947, 41-1903(part).**

7-16-4305. Compensation of committee members. There shall be no compensation for service on this committee.

History: **En. Sec. 3, Ch. 68, L. 1965; R.C.M. 1947, 41-1903(part).**

7-16-4306. Meetings and organization of committee. The committee shall meet within 10 days of appointment by the mayor. They shall select a chairman and a secretary and other necessary officers. Thereafter the committee shall meet at least quarterly and at such other times as may be necessary, convenient, or desired.

History: **En. Sec. 4, Ch. 68, L. 1965; R.C.M. 1947, 41-1904.**

7-16-4307. Promotion of winter work program. The committee shall work through public service advertising and through public relations to promote the winter work program.

History: **En. Sec. 5, Ch. 68, L. 1965; R.C.M. 1947, 41-1905.**

7-16-4308. Department of labor and industry to cooperate. The employees of free public employment offices of the department of labor and industry shall cooperate with the committee.

History: **En. Sec. 6, Ch. 68, L. 1965; R.C.M. 1947, 41-1906; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of labor and industry" for "Montana state employment service".

Short Form Amendment: The 1981 amendment of this section is a short form amendment. See compiler's comment to Title 2, ch. 15, part 17.

7-16-4309. Filing and use of committee minutes. Minutes of the meetings of the committee shall be filed by the secretary of the committee with the mayor of the municipality, who shall keep them as other public records. Members of the legislature may use these minutes to determine the employment problems of the municipalities involved.

History: **En. Sec. 7, Ch. 68, L. 1965; R.C.M. 1947, 41-1907.**

CHAPTERS 17 THROUGH 20

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CHAPTER 21

BUSINESS, AGRICULTURE, AND LIVESTOCK SERVICES AND REGULATION

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Part 21

General County Licensing Authority

7-21-2101. General licensing power of counties. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to grant such licenses as are provided by law.

History: **En. Subd. 17, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.16, R.C.M. 1935; R.C.M. 1947, 16-1019(part).**

7-21-2102. Procedure to supply license blanks. (1) The county clerk shall prepare and have printed such blank licenses as may be required, and after affixing his official seal thereto, he shall deliver the same to the county treasurer. At the time of such delivery, he shall charge the county treasurer therewith by appropriate entry in his records showing the amount, numbers, and classes of licenses so furnished.

(2) As licenses are issued and accounted for by the county treasurer, the county clerk shall credit such account with all licenses so issued and accounted for, so that the account will at all times show the number of licenses furnished the treasurer, their numbers, the number issued or canceled, and the number remaining in the hands of the county treasurer.

(3) On the first Monday in each month, the county treasurer must return to the county clerk all licenses unsold and show that he has paid into the county treasury all money collected for licenses sold during the preceding month.

History: **(1), (2)En. Sec. 4040, Pol. C. 1895; re-en. Sec. 2746, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1909; re-en. Sec. 2410, R.C.M. 1921; Cal. Pol. C. Sec. 3356; amd. Sec. 1, Ch. 54, L. 1933; re-en. Sec. 2410, R.C.M. 1935; Sec. 84-2701, R.C.M. 1947; (3)En. Sec. 4047, Pol. C. 1895; re-en. Sec. 2753, Rev. C. 1907; re-en. Sec. 2417, R.C.M. 1921; Cal. Pol. C. Sec. 3363; re-en. Sec. 2417, R.C.M. 1935; Sec. 84-2706, R.C.M. 1947; R.C.M. 1947, 84-2701, 84-2706.**

7-21-2103. Determination of persons required to obtain licenses — classes of licenses. (1) The county treasurer must make diligent inquiry as to all persons in his county liable to pay a license fee as provided in this part.

(2) Whenever the licenses are divided into classes, the county treasurer must require each person to state, under oath or affirmation, the probable amount of business which he, the firm of which he is a member or for which he is an agent or attorney, or the association or corporation of which he is the president, secretary, or managing agent will do in the succeeding 3 months. Thereupon such person, agent, president, secretary, or other officer must procure a license from the county treasurer for the term desired and the proper class. In all cases where an underestimate has been made by the party applying, the party making the underestimate or the company he represented is required to pay double the sum otherwise required for a license for the next quarter.

History: **En. Sec. 4045, Pol. C. 1895; re-en. Sec. 2751, Rev. C. 1907; re-en. Sec. 2415, R.C.M. 1921; Cal. Pol. C. Sec. 3361; re-en. Sec. 2415, R.C.M. 1935; R.C.M. 1947, 84-2704; amd. Sec. 1, Ch. 249, L. 1979.**

7-21-2104. Lien arising from license. (1) All property held or used in any trade, occupation, or profession for which a license is required by the provisions of this part is liable for such license and subject to a lien for the amount thereof. This lien has precedence of any other lien, claim, or demand.

(2) If any person fails or refuses to procure a license before the transaction of the business specified, the county treasurer must seize such property or any other property belonging to such person and sell the same in the manner provided in 15-17-901 through 15-17-903.

History: En. Sec. 4049, Pol. C. 1895; re-en. Sec. 2755, Rev. C. 1907; re-en. Sec. 2419, R.C.M. 1921; re-en. Sec. 2419, R.C.M. 1935; R.C.M. 1947, 84-2707.

7-21-2105. Disbursement of license fees. (1) Unless the disposition is otherwise provided for, all money collected by the county treasurer for licenses issued by the county under this chapter must be paid into the treasury of the county.

(2) Unless otherwise provided, the county treasurer shall retain 50% thereof for the use of the county, pay over 45% thereof to the state treasurer for the use of the general fund of the state, and pay over 5% thereof to the state treasurer for deposit in the earmarked revenue fund to be used by the livestock commission for predatory animal control.

History: En. Sec. 1, Ch. 67, L. 1905; re-en. Sec. 2756, Rev. C. 1907; amd. Sec. 1, Ch. 54, L. 1921; re-en. Sec. 2420, R.C.M. 1921; re-en. Sec. 2420, R.C.M. 1935; amd. Sec. 104, Ch. 147, L. 1963; R.C.M. 1947, 84-2708; amd. Sec. 2, Ch. 249, L. 1979.

7-21-2106 through 7-21-2110 reserved.

7-21-2111. General license requirements. (1) A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the county treasurer of the county where the applicant desires to transact the same.

(2) The license authorizes the party obtaining the same to transact the business described in such license in his town, city, or particular locality in the county.

(3) Separate licenses must be obtained for each branch establishment or separate house of business located in the same county.

History: En. Sec. 4043, Pol. C. 1895; re-en. Sec. 2749, Rev. C. 1907; re-en. Sec. 2413, R.C.M. 1921; Cal. Pol. C. Sec. 3359; re-en. Sec. 2413, R.C.M. 1935; R.C.M. 1947, 84-2702(part).

7-21-2112. Compliance with municipal regulation also required. No license issued under this part authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes unless such person, in addition to the license provided by this part, also procures the license required by the ordinances or orders of such city or town.

History: En. Sec. 4043, Pol. C. 1895; re-en. Sec. 2749, Rev. C. 1907; re-en. Sec. 2413, R.C.M. 1921; Cal. Pol. C. Sec. 3359; re-en. Sec. 2413, R.C.M. 1935; R.C.M. 1947, 84-2702(part).

7-21-2113. Effect of failure to comply with licensing requirements. Every person who commences or carries on a business, trade, profession, or calling, for the transaction or carrying on of which a license is required by the provisions of any of the license laws of Montana, without taking out or procuring such license is guilty of a misdemeanor and shall, unless specific punishment is prescribed by some other law of this state, be punishable as in the case of other misdemeanors and, in addition thereto, shall be liable to a penalty of 10% of the amount of said license. This penalty must be added to the amount of said license and collected by the county treasurer at the time of the collection of the license, but the payment of said penalty shall in no event relieve any person from prosecution for such misdemeanor.

History: **En. Sec. 6, p. 200, L. 1897; re-en. Sec. 2780, Rev. C. 1907; amd. Sec. 1, Ch. 25, L. 1921; re-en. Sec. 2443, R.C.M. 1921; re-en. Sec. 2443, R.C.M. 1935; R.C.M. 1947, 84-3209.**

7-21-2114. Investigation of possible licensing violations. It shall be the duty of the board of county commissioners or the state examiner, when examining the treasurer's report, to investigate if any persons are doing business in the county without a license or if the amount of the license is sufficient. In either event the treasurer shall be officially notified.

History: **En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part).**

7-21-2115. Liability of county treasurer for licensing violations. Upon the notification of the treasurer as provided in 7-21-2114, the treasurer shall be personally liable for such license or increase unless he promptly proceeds under 7-21-2104 or 7-21-2116 to collect the same.

History: **En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part).**

7-21-2116. Enforcement of licensing requirements. (1) The county treasurer must direct suit in the name of the state of Montana as plaintiff to be brought for the recovery of the license tax, against any person required to take out a license who fails, neglects, or refuses to take out such license or who carries on or attempts to carry on business without such license. In such case, either the treasurer or the county attorney must make the necessary affidavit for the writ of attachment and such writ of attachment may issue without any bonds being given on behalf of the plaintiff.

(2) In case of a recovery by the plaintiff, $15 damages must be added to the judgment and costs to be collected from the defendant.

History: **En. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R.C.M. 1921; Cal. Pol. C. Sec. 3360; re-en. Sec. 2414, R.C.M. 1935; R.C.M. 1947, 84-2703(part).**

7-21-2117. Defenses in actions related to licensing violations. Upon the trial of any action authorized by this part, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it, but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with damages and costs.

History: **En. Sec. 4046, Pol. C. 1895; re-en. Sec. 2752, Rev. C. 1907; re-en. Sec. 2416, R.C.M. 1921; Cal. Pol. C. Sec. 3362; re-en. Sec. 2416, R.C.M. 1935; R.C.M. 1947, 84-2705.**

Part 22

Miscellaneous Licenses

7-21-2201. Licensing of ferries. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to grant licenses for keeping ferries.

History: En. Subd. 17, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.16, R.C.M. 1935; R.C.M. 1947, 16-1019(part).

7-21-2202. License required to do business as itinerant vendor of drugs — fee. Any itinerant vendor of any drug, poison, ointment, or appliance of any kind intended for treatment of any disease or injury who shall, by writing, printing, or any other method, publicly profess to cure or treat disease, injury, or deformity by any drug, nostrum, manipulation, or other expedient shall pay a license of $50 per annum in each county in which he may offer to do business or according to the usual laws in force for that purpose.

History: En. Sec. 655, Pol. C. 1895; re-en. Sec. 1637, Rev. C. 1907; re-en. Sec. 2429, R.C.M. 1921; re-en. Sec. 2429, R.C.M. 1935; R.C.M. 1947, 84-3101.

7-21-2203. Billiard, pool, or bagatelle table license. (1) Each proprietor of a billiard, pool, or bagatelle table not kept exclusively for family use must obtain a license, for which the county treasurer must require payment as follows: $3.70 for each table per quarter.

(2) No license must be granted for a term less than 3 months.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2204. Bowling alley license. (1) Each proprietor of a bowling alley must obtain a license, for which the county treasurer must require payment as follows: $5 for each alley per quarter.

(2) No license must be granted for a term less than 3 months.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2205. Theater licenses. (1) Except as provided in subsection (2), the manager or lessee of every theater not a variety or concert theater must obtain a license, for which the county treasurer must require payment as follows: $100 per annum.

(2) Notwithstanding the provisions of subsection (1), the manager or lessee of every theater not a variety or concert theater in towns of a population of 3,500 or less and in cases where no monthly license is paid must obtain a license, for which the county treasurer must require payment as follows:

(a) $2 for each single performance;

(b) $3 for each single exhibition of an opera or concert singer not exhibited in any theater where a yearly license is paid;

(c) $5 for each single performance when not in a theater where a yearly license is paid, of minstrels, legerdemain, or shows not provided for in this subsection.

(3) The manager or lessee of each variety or concert theater (whether an admittance fee is charged or not) must obtain a license, for which the county treasurer must require payment as follows: $75 per month.

(4) The provisions of this section are subject to the exemptions from licensing provided by 7-21-2207.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2206. Traveling show licenses. (1) Subject to the provisions of subsection (2), a license must be obtained for every traveling show, such as circuses, menageries, sideshows, carnivals, wild west shows, animal shows, or tent shows, exhibiting in tents, open air, or other than a regular theater, for which the county treasurer must require payment as follows:

(a) $75 per day for traveling in less than 25 railroad cars;
(b) $200 per day for traveling in over 25 railroad cars;
(c) $25 per day for traveling on highways in 10 trucks or less;
(d) $50 per day for traveling on highways in 11 to 25 trucks;
(e) $75 per day for traveling on highways in more than 25 trucks.

(2) The county treasurer shall not issue any license for circuses, sideshows, carnivals, menageries, wild west shows, animal shows, or tent shows to be held or performed within a period of 30 days prior to or during the holding of any local, county, district, or state fair or rodeo without first obtaining the written consent of the board of county commissioners of the county where application is made for such license to operate such shows.

(3) The provisions of this section are subject to the exemptions from licensing provided by 7-21-2207.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2207. Exemption from certain entertainment license requirements. No license must be collected from any amateur exhibition or concert for school or charitable or religious purposes; from any county, district, or state agricultural fair; from rodeo associations; or from any veterans' organization not conducted for private gain.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2208. Pawnbroker license. A license must be obtained for each pawnbroker, for which the county treasurer must require payment as follows: $55 per quarter.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2209. Intelligence office license. A license must be obtained by each keeper of an intelligence office, for which the county treasurer must require payment as follows: $10 per quarter.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2210. Shooting gallery license. A license must be obtained by each keeper of a shooting gallery for gain, for which the county treasurer must require payment as follows: $15 per quarter.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R.C.M. 1921; Cal. Pol. C. Sec. 3380; amd. Sec. 1, Ch. 44, L. 1935; re-en. Sec. 2434, R.C.M. 1935; amd. Sec. 1, Ch. 94, L. 1945; amd. Sec. 1, Ch. 74, L. 1949; amd. Sec. 1, Ch. 66, L. 1953; R.C.M. 1947, 84-3201(part).

7-21-2211. Railway warehouse license. Each railway company acting in the capacity of a warehouse for the purpose of storing and distributing goods, other than in the capacity of a common carrier, shall pay, in each county in which the business is carried on, a license of $10 per quarter.

History: En. Sec. 1, Ch. 22, L. 1907; Sec. 2763, Rev. C. 1907; amd. Sec. 1, Ch. 100, L. 1917; re-en. Sec. 2435, R.C.M. 1921; amd. Sec. 5, Ch. 28, Ex. L. 1933; re-en. Sec. 2435, R.C.M. 1935; R.C.M. 1947, 84-3202; amd. Sec. 3, Ch. 249, L. 1979.

7-21-2212. Soft drink manufacturing license. Every manufacturer of nonintoxicating beverages, pop, soda waters, or other light drinks put up in bottles or other containers shall pay a license of:

(1) $60 semiannually in all cities having a population of 10,000 people or over;

(2) $40 semiannually in all cities or towns of more than 5,000 and less than 10,000 in population; and

(3) $25 semiannually in all cities or towns with a population of less than 5,000.

History: En. Sec. 3, p. 199, L. 1897; re-en. Sec. 2770, Rev. C. 1907; amd. Sec. 1, Ch. 26, L. 1921; re-en. Sec. 2436, R.C.M. 1921; re-en. Sec. 2436, R.C.M. 1935; R.C.M. 1947, 84-3203.

7-21-2213. Malt manufacturer's license. Every manufacturer of malt, when not engaged in the manufacture of malt liquors in Montana, must pay a license of $100 per annum.

History: En. Sec. 5, p. 200, L. 1897; re-en. Sec. 2779, Rev. C. 1907; re-en. Sec. 2442, R.C.M. 1921; re-en. Sec. 2442, R.C.M. 1935; R.C.M. 1947, 84-3208.

7-21-2214. Skating rink and merry-go-round license. Every keeper of a roller- or ice-skating rink or merry-go-round must procure a license and pay therefor the sum of:

(1) $15 per quarter in cities or towns of 3,000 people and upward;

(2) $10 per quarter in towns of 1,000 and less than 3,000; and

(3) $5 per quarter in towns of less than 1,000 inhabitants.

History: En. Sec. 4077, Pol. C. 1895; re-en. Sec. 2775, Rev. C. 1907; re-en. Sec. 2438, R.C.M. 1921; re-en. Sec. 2438, R.C.M. 1935; amd. Sec. 1, Ch. 66, L. 1945; R.C.M. 1947, 84-3204.

7-21-2215. Laundry license. (1) Except as provided in subsection (2), every person engaged in the laundry business, other than the steam laundry business, shall pay a license of $10 per quarter.

(2) This section shall not apply to persons engaged in a laundry business where not more than two persons are engaged or employed or kept at work.

(3) The license obtained under subsection (1) shall be for one place of business only.

History: En. Sec. 4, p. 200, L. 1897; re-en. Sec. 2776, Rev. C. 1907; re-en. Sec. 2440, R.C.M. 1921; re-en. Sec. 2440, R.C.M. 1935; amd. Sec. 43, Ch. 535, L. 1975; R.C.M. 1947, 84-3206.

7-21-2216. Repealed. Sec. 1, Ch. 161, L. 1979.

History: En. Sec. 4082, Pol. C. 1895; re-en. Sec. 2778, Rev. C. 1907; re-en. Sec. 2441, R.C.M. 1921; re-en. Sec. 2441, R.C.M. 1935; R.C.M. 1947, 84-3207.

Part 23

Licensing of Itinerant Vendors

7-21-2301. Definitions. (1) A "consumer" is one who uses and by using destroys the value of the article purchased.

(2) Within the meaning of this part, an "itinerant vendor" is any person engaged or employed in the business of retailing to consumers by going from consumer to consumer, either on the streets or to their places of residence or employment, and there soliciting, selling, or offering to sell or exhibiting for sale (by sample, by catalogue, or otherwise) or taking orders for future delivery of any goods, wares, or merchandise or for services to be performed in the future.

History: En. Sec. 1, Ch. 184, L. 1925; re-en. Sec. 2429.16, R.C.M. 1935; R.C.M. 1947, 84-3102(part).

7-21-2302. Scope of part. (1) This part shall in no way affect any person, firm, partnership, or corporation with a commercial rating who maintains a permanent place of business in Montana.

(2) Nothing contained in this part is intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part, provided that such municipality shall not impose any license fees in excess of twice the amount provided herein for county license fees.

(3) Nothing contained in this part is intended to operate so as to interfere with the power of the United States to regulate commerce between the states, as such power is defined by the supreme court of the United States.

History: (1)En. Sec. 1, Ch. 184, L. 1925; re-en. Sec. 2429.16, R.C.M. 1935; Sec. 84-3102, R.C.M. 1947; (2), (3)En. Sec. 8, Ch. 184, L. 1925; re-en. Sec. 2429.23, R.C.M. 1935; Sec. 84-3109, R.C.M. 1947; R.C.M. 1947, 84-3102(part), 84-3109.

7-21-2303. License required to do business as itinerant vendor — fee. For the purpose of defraying the expenses of regulation under this part, every itinerant vendor desiring to do business in any county of this state must, before commencing such business, pay to the county treasurer of such county the sum of $15 for a license to conduct such business for a period of 1 year from the date such license is issued.

History: En. Sec. 2, Ch. 184, L. 1925; re-en. Sec. 2429.17, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1937; R.C.M. 1947, 84-3103.

7-21-2304. Nontransferability of license. The license shall be nontransferable and shall have printed across the face thereof in bold type the words "not transferable".

History: En. Sec. 5, Ch. 184, L. 1925; re-en. Sec. 2429.20, R.C.M. 1935; R.C.M. 1947, 84-3106(part).

7-21-2305. Application for itinerant vendor license. (1) Every itinerant vendor desiring to do business in any county of this state must, before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing, subscribed and sworn to by such applicant before an officer in this state authorized to take oaths.

(2) The application shall set forth:

(a) name of applicant;

(b) his place of permanent residence;

(c) his local headquarters, if any;

(d) time of his arrival in the county;

(e) county from which last license, if any, received;

(f) whether acting as principal, agent, or employee;

(g) if acting as agent or employee, the name and place of business of his principal or employer;

(h) brief descriptive list of articles to be offered for sale or services to be performed;

(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery.

(3) If the applicant is acting as an agent, the principal's acknowledgment of such agency must accompany the application as part of the application.

(4) At the time of filing the application, such itinerant vendor must accompany the application with the sum specified in 7-21-2303 as a license fee.

History: En. Sec. 3, Ch. 184, L. 1925; re-en. Sec. 2429.18, R.C.M. 1935; R.C.M. 1947, 84-3104.

7-21-2306. Bond required if deposit taken on orders for future delivery. (1) Every application made by an itinerant vendor taking orders for future delivery and collecting advance payments, deposits, or guarantees thereon under the terms of 7-21-2301 through 7-21-2305 shall be accompanied by a bond in the penal sum of $250 to said county treasurer.

(2) (a) The bond shall be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county.

(b) In lieu of a bond meeting the requirements of subsection (2)(a), the application may be accompanied by a cash bond of equal amount.

(3) The bond shall be approved by said county treasurer and conditioned upon making of final delivery of the goods ordered or the services to be rendered in accordance with the terms of such order or failing therein, that the money advanced by his customers be refunded.

(4) Such bond shall remain in full force and effect for a period of 6 months after the expiration of any such license and shall be held to assure

only business transacted under the authority of the license issued pursuant to the application which such bond accompanied.

History: En. Sec. 4, Ch. 184, L. 1925; re-en. Sec. 2429.19, R.C.M. 1935; R.C.M. 1947, 84-3105(part).

7-21-2307. Right of aggrieved purchaser. Any person aggrieved by the action or misrepresentation of any such itinerant vendor shall have a right of action on the bond for the recovery of his money advanced or damages and costs.

History: En. Sec. 4, Ch. 184, L. 1925; re-en. Sec. 2429.19, R.C.M. 1935; R.C.M. 1947, 84-3105(part).

7-21-2308. Processing of application — issuance of license. (1) Upon filing of the application prescribed in 7-21-2305 or the filing of such application and the bond prescribed in 7-21-2306, in proper form, and upon the payment to the county treasurer of the sum required by 7-21-2303, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in such application in the county in which such license is so issued for a period of 90 days from the date of such license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county. The county clerk and recorder shall file the same in his office and keep an appropriate index thereof which shall show the date filed, the name of the applicant, and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 5, Ch. 184, L. 1925; re-en. Sec. 2429.20, R.C.M. 1935; R.C.M. 1947, 84-3106(part).

7-21-2309. License to be displayed upon demand. (1) Every such itinerant vendor doing business under the provisions of this part must upon demand of any person exhibit his license and permit the same to then and there be read by the person making such demand.

(2) Any such itinerant vendor who shall willfully refuse or fail to exhibit his license as above provided is guilty of a misdemeanor and shall be fined not less than $100 or more than $250 for each offense.

History: En. Sec. 6, Ch. 184, L. 1925; re-en. Sec. 2429.21, R.C.M. 1935; amd. Sec. 2, Ch. 109, L. 1937; R.C.M. 1947, 84-3107.

7-21-2310. Effect of failure to comply with licensing requirements. Every itinerant vendor, as herein defined, doing business without first obtaining a license as required by this part is guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 7, Ch. 184, L. 1925; re-en. Sec. 2429.22, R.C.M. 1935; R.C.M. 1947, 84-3108.

Part 24

Licensing of Transient Retail Merchants

7-21-2401. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Temporary premises" means any hotel, roominghouse, storeroom, building or part of any building, tent, vacant lot, freight station, railroad car, automobile, truck, trailer or trailer house, or public or quasi-public place, temporarily occupied for such business as described in subsection (2).

(2) "Transient retail merchant" means every person, firm, or corporation acting for himself or itself or representing any other person, firm, or corporation who or which brings into temporary premises a stock of goods, wares, articles of merchandise, notions, or other articles of trade and who or which solicits, sells, offers to sell, or exhibits for sale such stock of goods, wares, articles of merchandise, notions, or other articles of trade at retail.

History: En. Sec. 1, Ch. 182, L. 1925; re-en. Sec. 2429.1, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1951; R.C.M. 1947, 84-3701(part); amd. Sec. 4, Ch. 249, L. 1979.

7-21-2402. Applicability of term transient retail merchant. The definition of transient retail merchant shall continue to apply until such person, firm, or corporation shall be continuously engaged at such particular place in the county for a period of 1 year.

History: En. Sec. 1, Ch. 182, L. 1925; re-en. Sec. 2429.1, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1951; R.C.M. 1947, 84-3701(part).

7-21-2403. Scope of part. (1) Nothing contained in this part is intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part.

(2) The provisions of this part shall not apply to duly constituted city markets operated by authority of any city or town.

(3) Nothing contained in this part is intended to operate so as to interfere with the power of the United States to regulate commerce between the states, as such power is defined by the supreme court of the United States.

History: En. Sec. 8, Ch. 182, L. 1925; re-en. Sec. 2429.8, R.C.M. 1935; R.C.M. 1947, 84-3708.

7-21-2404. License required to do business as transient retail merchant — fee. The amount to be paid for the license to conduct the business of a transient retail merchant shall be the sum of $5 for each week or fraction thereof, to be paid in advance to the county treasurer of the county in which such business is conducted.

History: En. Sec. 2, Ch. 182, L. 1925; re-en. Sec. 2429.2, R.C.M. 1935; R.C.M. 1947, 84-3702.

7-21-2405. Nontransferability of license. Such license shall be nontransferable and shall have printed across the face thereof in bold type the words "Not Transferable".

History: En. Sec. 5, Ch. 182, L. 1925; re-en. Sec. 2429.5, R.C.M. 1935; R.C.M. 1947, 84-3705(part).

7-21-2406. Application for transient retail merchant license. (1) Every transient retail merchant desiring to do business in any county of this state must, before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing, subscribed and sworn to by such applicant before an officer in this state authorized to take oaths.

(2) The application shall set forth:

(a) name of applicant;
(b) his place of permanent residence;
(c) his local headquarters, if any;
(d) time of his arrival in the county;
(e) county from which last license, if any, received;
(f) whether acting as principal, agent, or employee;
(g) if acting as agent or employee, the name and place of business of his principal or employer;
(h) brief descriptive list of articles to be offered for sale or services to be performed;
(i) whether payments or deposits of money are collected when orders are taken or in advance of final delivery;
(j) the number of weeks for which license is requested.

(3) If the applicant is acting as an agent, the principal's acknowledgment of such agency must accompany the application as part of the application.

(4) At the time of filing the application, such transient retail merchant must accompany the application with the sum specified in 7-21-2404 as a license fee, except as provided in 7-21-2407.

History: En. Sec. 3, Ch. 182, L. 1925; re-en. Sec. 2429.3, R.C.M. 1935; R.C.M. 1947, 84-3703.

7-21-2407. Bond in lieu of license fee. (1) In lieu of the license fee prescribed in 7-21-2404, every transient retail merchant who files with the application required in 7-21-2406 an affidavit indicating bona fide intention to become a permanent merchant and continue in business for a period longer than 1 year shall, upon filing and approval of the bond provided for in this section, receive from the county treasurer a license permitting the conduct of such business for a period of 1 year.

(2) Such bond shall be a surety bond in the penal sum of $1,000 to said county treasurer.

(3) (a) The bond shall be executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county.

(b) In lieu of a bond meeting the requirements of subsection (3)(a), the bond may be a cash bond of equal amount.

(4) The bond shall be approved by said county treasurer and conditioned upon the performance of the intention to become a permanent merchant and continue in business for a period longer than 1 year and to insure the payment of license fees for the period such business is actually conducted if not in fact a bona fide permanent business. The bond shall be further conditioned upon the delivery of goods ordered or sold in accordance with the terms of such order or sale.

(5) Such bond shall remain in full force and effect for a period of 6 months after the expiration of the 1-year period.

History: En. Sec. 4, Ch. 182, L. 1925; re-en. Sec. 2429.4, R.C.M. 1935; R.C.M. 1947, 84-3704(part).

7-21-2408. Right of aggrieved purchaser. Any person aggrieved by any action or misrepresentation of any such transient retail merchant shall have a right of action on the bond provided for in 7-21-2407 for the recovery of his money advanced or damages and costs.

History: En. Sec. 4, Ch. 182, L. 1925; re-en. Sec. 2429.4, R.C.M. 1935; R.C.M. 1947, 84-3704(part).

7-21-2409. Processing of application — issuance of license. (1) (a) Upon filing of the application prescribed in 7-21-2406 and the payment of the fee prescribed in 7-21-2404, the county treasurer shall issue and deliver to the applicant, in the county, a license to carry on the business described in such application in the county in which such license is so issued for the period for which such license is requested.

(b) Upon filing of the application prescribed in 7-21-2406 and the bond prescribed in 7-21-2407, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in such application in the county in which such license is so issued for a period of 1 year from the date of such license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and the duration thereof and shall immediately file such application with the county clerk and recorder of his county. The county clerk and recorder shall file the same in his office and keep an appropriate index thereof which shall show the date filed, the name of applicant, and an appropriate reference to the file number by which said application may be found.

History: **En. Sec. 5, Ch. 182, L. 1925; re-en. Sec. 2429.5, R.C.M. 1935; R.C.M. 1947, 84-3705(part).**

7-21-2410. License to be displayed in place of business. (1) Every transient retail merchant doing business under the provisions of this part shall at all times keep said license conspicuously posted in said place of business.

(2) Any such transient retail merchant who shall fail to post and keep posted his license as provided above is guilty of a misdemeanor and shall be fined not less than $10 or more than $25 for each offense.

History: **En. Sec. 6, Ch. 182, L. 1925; re-en. Sec. 2429.6, R.C.M. 1935; R.C.M. 1947, 84-3706.**

7-21-2411. Effect of failure to comply with licensing requirements. Every transient retail merchant, as herein defined, doing business without first obtaining a license so required by this part is guilty of a misdemeanor and shall be punished accordingly.

History: **En. Sec. 7, Ch. 182, L. 1925; re-en. Sec. 2429.7, R.C.M. 1935; R.C.M. 1947, 84-3707.**

Part 25

Licensing of Hucksters

7-21-2501. Definition of term huckster. Within the meaning of this part, any person engaged or employed in the business of buying and selling farm products who disposes of such products by selling them at retail to consumers by going from house to house is a huckster.

History: **En. Sec. 1, Ch. 183, L. 1925; re-en. Sec. 2429.9, R.C.M. 1935; R.C.M. 1947, 84-2901.**

7-21-2502. Scope of part. (1) Nothing contained in this part is intended to operate so as to impair, abridge, or interfere with the right of any incorporated municipality within this state to enact local laws or ordinances dealing with the subject of this part.

(2) Nothing in this part shall be construed so as in any manner to impair, abridge, or interfere with the right of a grower or producer of farm products to dispose of such products grown or produced by him.

History: **En. Sec. 7, Ch. 183, L. 1925; re-en. Sec. 2429.15, R.C.M. 1935; R.C.M. 1947, 84-2907.**

7-21-2503. License required to do business as huckster — fee. Every huckster desiring to do business in any county of this state must, before commencing such business, pay to the county treasurer of such county the sum of $15 for a license to conduct such business for a period of 6 months from the date such license is issued.

History: **En. Sec. 2, Ch. 183, L. 1925; re-en. Sec. 2429.10, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1937; R.C.M. 1947, 84-2902.**

7-21-2504. Nontransferability of license. The license required by 7-21-2503 shall be nontransferable and shall have printed across the face thereof in bold type the words "not transferable".

History: **En. Sec. 4, Ch. 183, L. 1925; re-en. Sec. 2429.12, R.C.M. 1935; R.C.M. 1947, 84-2904(part).**

7-21-2505. Application for huckster license. (1) Every huckster desiring to do business in any county of this state must, before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing.

(2) The application shall set forth:

(a) name of applicant;

(b) his place of permanent residence;

(c) whether acting as principal, agent, or employee;

(d) if acting as agent or employee, the name and place of business of his principal or employer.

(3) At the time of filing the application, such huckster must accompany the application with the sum specified in 7-21-2503 as a license fee.

History: **En. Sec. 3, Ch. 183, L. 1925; re-en. Sec. 2429.11, R.C.M. 1935; R.C.M. 1947, 84-2903.**

7-21-2506. Processing of application — issuance of license. (1) Upon filing of the application specified in 7-21-2505 and upon the payment to the county treasurer of the sum specified in 7-21-2503, the county treasurer shall issue and deliver to the applicant a license to carry on the business of a huckster for a period of 6 months from the date of such license.

(2) The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county. The county clerk and recorder shall file the same in his office and keep an appropriate index thereof which shall show the date filed, the name of the applicant, and an appropriate reference to the file number by which said application may be found.

History: **En. Sec. 4, Ch. 183, L. 1925; re-en. Sec. 2429.12, R.C.M. 1935; R.C.M. 1947, 84-2904(part).**

7-21-2507. License to be displayed upon demand. (1) Every such huckster doing business under the provisions of this part must, upon demand of any interested person, exhibit his license and permit the same to then and there be read by the person making such demand.

(2) Any such huckster who shall refuse or fail to exhibit his license as provided above is guilty of a misdemeanor and shall be fined not less than $10 or more than $25.

History: **En. Sec. 5, Ch. 183, L. 1925; re-en. Sec. 2429.13, R.C.M. 1935; R.C.M. 1947, 84-2905.**

7-21-2508. Effect of failure to comply with licensing requirements. Every huckster, as herein defined, doing business without first obtaining a license as required by this part is guilty of a misdemeanor and shall be punished accordingly, as provided in 46-18-212.

History: **En. Sec. 6, Ch. 183, L. 1925; re-en. Sec. 2429.14, R.C.M. 1935; R.C.M. 1947, 84-2906.**

Part 26

Licensing of Public Dances and Dancehalls

7-21-2601. Definitions. (1) The term "dancehall" shall be construed to mean any room, hall, pavilion, building, or other structure kept for the purpose of conducting therein public dances or dancing.

(2) As used in this part, the term "public dance" shall be construed to mean any dance to which the public generally may gain admission, with or without the payment of an admission fee and whether said admission fee is paid in the form of club dues, membership fees, or in any other manner.

History: **En. Sec. 1, Ch. 131, L. 1929; re-en. Sec. 2815.1, R.C.M. 1935; R.C.M. 1947, 16-1166.**

7-21-2602. License required to hold public dance or maintain dancehall. (1) No person, partnership, or corporation shall hold any public dance or conduct or maintain any dancehall without the limits of incorporated cities or towns without having first procured from the board of county commissioners of the county in which it is proposed to conduct such dance or dancehall a license to do so.

(2) No license shall be granted to any corporation, but if any dancehall be conducted by a corporation the license shall issue to the manager or other directing head thereof.

(3) No license to conduct a public dance or dancehall shall be granted unless the applicant therefor be of good moral character.

History: **En. Sec. 2, Ch. 131, L. 1929; re-en. Sec. 2815.2, R.C.M. 1935; R.C.M. 1947, 16-1167(part).**

7-21-2603. Exemption from licensing requirements. (1) Single dances held by grange, patriotic, or fraternal organizations or strictly community dances may be held without a permit.

(2) The county commissioners may issue a permit without charge for grange, patriotic, fraternal, or community dances.

History: **En. Sec. 3, Ch. 131, L. 1929; re-en. Sec. 2815.3, R.C.M. 1935; R.C.M. 1947, 16-1168(part).**

7-21-2604. License fees. (1) The board of county commissioners of each county shall by a general order, from time to time, fix the fees to be charged for licenses granted under this part.

(2) Such fees, however, may not be less than $5 or more than $25 for an annual dancehall license and may not be less than $1 or more than $5 for a license for a single dance.

History: En. Sec. 3, Ch. 131, L. 1929; re-en. Sec. 2815.3, R.C.M. 1935; R.C.M. 1947, 16-1168(part).

7-21-2605. Application for license. Applications for licenses under this part shall be filed with the clerk of the board of county commissioners and be accompanied with a receipt showing the payment to the county treasurer of a license fee.

History: En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2606. Issuance of license. (1) After determining to grant a license to the applicant, the board of county commissioners shall notify the clerk and recorder.

(2) The clerk and recorder shall issue the license to the applicant.

History: En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2607. Basis for refusal to grant dancehall license. The board of county commissioners may in its discretion refuse to grant licenses for dance halls to be located at such places or to be conducted at such times as will in their judgment interfere with the comfort and happiness of the community in which such proposed dancehall is to be located.

History: En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; R.C.M. 1947, 16-1170(part).

7-21-2608. Revocation of dancehall license. The license of any public dancehall may be forfeited or revoked by the county commissioners for disorderly or immoral conduct on the premises.

History: En. Sec. 7, Ch. 131, L. 1929; re-en. Sec. 2815.7, R.C.M. 1935; R.C.M. 1947, 16-1172.

7-21-2609. Term of license. (1) Licenses for dancehalls shall be issued by the year or by the quarter, as requested by the applicant.

(2) A temporary license of a period not exceeding 30 days may be issued by the clerk and recorder of the county in which such dance is to be held.

(3) A license for a single public dance shall entitle the holder thereof to conduct such dance only on the day and at the place specified in the license.

History: En. Sec. 2, Ch. 131, L. 1929; re-en. Sec. 2815.2, R.C.M. 1935; R.C.M. 1947, 16-1167(part).

7-21-2610. Display of license required. All licenses granted under this part shall be kept posted in a conspicuous place on the licensed premises.

History: En. Sec. 6, Ch. 131, L. 1929; re-en. Sec. 2815.6, R.C.M. 1935; R.C.M. 1947, 16-1171(part).

7-21-2611. Restrictions on type of dancing. No immoral, indecent, suggestive, or obscene dance shall be given or carried on in any dancehall or any dance licensed hereunder.

History: En. Sec. 4, Ch. 131, L. 1929; re-en. Sec. 2815.4, R.C.M. 1935; R.C.M. 1947, 16-1169(part).

7-21-2612. Adequate lighting of dancehalls. All buildings, halls, rooms, pavilions, or other places in which public dances are carried on, as well as all halls, corridors, and rooms leading thereto or connected therewith, shall at all times while open to the public be well lighted.

History: En. Sec. 4, Ch. 131, L. 1929; re-en. Sec. 2815.4, R.C.M. 1935; R.C.M. 1947, 16-1169(part).

7-21-2613. Rules for implementation of part. The board of county commissioners shall have authority to make all proper and necessary administrative rules for the purpose of carrying into effect the provisions of this part with respect to the conduct of public dances.

History: En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; R.C.M. 1947, 16-1170(part).

7-21-2614. Enforcement of part. (1) The enforcement of the provisions of this part is enjoined upon every officer and official whose duty it is to enforce the laws of the state.

(2) All peace officers of Montana shall have free access to public dances and dancehalls for the purpose of inspection and to enforce compliance with the provisions of this part.

History: (1)En. Sec. 8, Ch. 131, L. 1929; re-en. Sec. 2815.8, R.C.M. 1935; Sec. 16-1173, R.C.M. 1947; (2)En. Sec. 5, Ch. 131, L. 1929; re-en. Sec. 2815.5, R.C.M. 1935; Sec. 16-1170, R.C.M. 1947; R.C.M. 1947, 16-1170(part), 16-1173.

7-21-2615. Effect of failure to comply with part. Any person violating any of the provisions of this part shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $100 or by imprisonment for a term not exceeding 30 days or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 131, L. 1929; re-en. Sec. 2815.9, R.C.M. 1935; R.C.M. 1947, 16-1174.

Parts 27 through 30 reserved

Part 31

Public Scales

7-21-3101. Establishment of public scales. When petitioned by 25 or more residents and freeholders of the county, the board of county commissioners of any county is hereby authorized in its discretion to establish and locate public scales at any suitable location selected by the county commissioners within the county.

History: En. Sec. 1, Ch. 22, L. 1905; re-en. Sec. 2899, Rev. C. 1907; re-en. Sec. 4471, R.C.M. 1921; re-en. Sec. 4471, R.C.M. 1935; R.C.M. 1947, 16-1108.

7-21-3102. Ownership of public scales. Such scales shall be purchased by the county, shall be the property of the county, and at all times shall be under its control and subject to the will of the county commissioners.

History: En. Sec. 2, Ch. 22, L. 1905; re-en. Sec. 2900, Rev. C. 1907; re-en. Sec. 4472, R.C.M. 1921; re-en. Sec. 4472, R.C.M. 1935; R.C.M. 1947, 16-1109(part).

7-21-3103. Capacity and design of public scales. Such scales shall be of not less than 5 tons' weighing capacity and shall be provided with glass or open front which can be observed by the one weighing without dismounting from wagon.

History: En. Sec. 2, Ch. 22, L. 1905; re-en. Sec. 2900, Rev. C. 1907; re-en. Sec. 4472, R.C.M. 1921; re-en. Sec. 4472, R.C.M. 1935; R.C.M. 1947, 16-1109(part).

7-21-3104. Appointment of public weigher. (1) The board of county commissioners shall appoint, at each place where public scales are established by them, a public weigher who shall have the custody and care of such property.

(2) Such public weigher shall be governed by such rules as may be from time to time prescribed or adopted by the board, and he may be removed at any time by such board.

History: (1)En. Sec. 3, Ch. 22, L. 1905; re-en. Sec. 2901, Rev. C. 1907; re-en. Sec. 4473, R.C.M. 1921; re-en. Sec. 4473, R.C.M. 1935; Sec. 16-1110, R.C.M. 1947; (2)En. Sec. 5, Ch. 22, L. 1905; re-en. Sec. 2903, Rev. C. 1907; re-en. Sec. 4475, R.C.M. 1921; re-en. Sec. 4475, R.C.M. 1935; Sec. 16-1112, R.C.M. 1947; R.C.M. 1947, 16-1110(part), 16-1112(part).

7-21-3105. Bond of public weigher. A public weigher appointed pursuant to 7-21-3104 shall give a bond to the county in the sum of $500, conditioned for the safekeeping of the public scales and for the faithful and impartial discharge of the duties incident to his trust in office.

History: En. Sec. 3, Ch. 22, L. 1905; re-en. Sec. 2901, Rev. C. 1907; re-en. Sec. 4473, R.C.M. 1921; re-en. Sec. 4473, R.C.M. 1935; R.C.M. 1947, 16-1110(part).

7-21-3106. Record of weighing. (1) It shall be the duty of each public weigher to keep a stub record of all weighing done by him. The record and the receipt issued by such public weigher shall show for whom property was weighed and the character and kind thereof and shall constitute prima facie evidence of the facts therein contained.

(2) All such stub records or other records which the county commissioners may require him to keep shall at all times be open to public inspection during business hours, between 7 a.m. and 6 p.m. of any day, except Sundays and legal holidays.

(3) Such public weigher shall file a sworn statement with the county recorder of the county, as prescribed by the county commissioners thereof. The statement shall show the date and character or kind of property weighed, for whom weighed, and a complete statement of all fees collected.

History: En. Sec. 4, Ch. 22, L. 1905; re-en. Sec. 2902, Rev. C. 1907; re-en. Sec. 4474, R.C.M. 1921; re-en. Sec. 4474, R.C.M. 1935; R.C.M. 1947, 16-1111.

7-21-3107. Fee for weighing. Such public weigher shall receive not to exceed 10 cents for each receipt issued by him.

History: En. Sec. 5, Ch. 22, L. 1905; re-en. Sec. 2903, Rev. C. 1907; re-en. Sec. 4475, R.C.M. 1921; re-en. Sec. 4475, R.C.M. 1935; R.C.M. 1947, 16-1112(part).

7-21-3108. Misconduct by public weigher. Any public weigher under the provisions of this part who shall make any false or fraudulent receipt of any weighing done by him or shall be guilty of any collusion with any other person or persons for the purpose of deceiving any person or persons in regard to the correctness of weights or who shall fail to comply with the requirements of 7-21-3104(2) or 7-21-3107 is guilty of a misdemeanor.

History: En. Sec. 6, Ch. 22, L. 1905; re-en. Sec. 2904, Rev. C. 1907; re-en. Sec. 4476, R.C.M. 1921; re-en. Sec. 4476, R.C.M. 1935; R.C.M. 1947, 16-1113.

Part 32

County Agricultural and Livestock Services

7-21-3201. Authorization to appropriate money for promotion of county products. (1) The board of county commissioners of any county may appropriate money from the general fund of the county for advertising the agricultural resources of the county through the department of agriculture or for assisting the department of agriculture in presenting exhibits of Montana products at fairs or expositions outside the state.

(2) Said money shall be expended in such manner as the board may direct or may be transmitted to the department of agriculture, when such appropriation is for the purpose of assisting said department in advertising the resources or presenting the exhibits herein indicated.

History: (1)En. Sec. 1, Ch. 107, L. 1927; re-en. Sec. 4470.1, R.C.M. 1935; amd. Sec. 116, Ch. 218, L. 1974; Sec. 16-1105, R.C.M. 1947; (2)En. Sec. 2, Ch. 107, L. 1927; re-en. Sec. 4470.2, R.C.M. 1935; Sec. 16-1106, R.C.M. 1947; R.C.M. 1947, 16-1105, 16-1106(part).

7-21-3202. Limitation on appropriation to promote county products. The appropriation authorized by 7-21-3201 shall not exceed in any one year the following amounts:

(1) in counties of the first class or second class, $1,000;

(2) in counties of the third class, $500;

(3) in all other counties, $250.

History: En. Sec. 2, Ch. 107, L. 1927; re-en. Sec. 4470.2, R.C.M. 1935; R.C.M. 1947, 16-1106(part).

7-21-3203. Support of extension work in agriculture and home economics. (1) The county commissioners of any county may appropriate money from the general funds of the county treasury or from funds provided by special levy, which the county commissioners are hereby authorized to make at the same time as other levies for county purposes, for the purpose of carrying on extension work in agriculture and home economics within the county in cooperation with Montana state university and the United States department of agriculture.

(2) The amount of such appropriation in any county, its method of expenditure, the responsibility for the direction of the work, and the procedure of appointing agents and the compensation and conditions of service of such agents shall be covered in memoranda of agreement between the county commissioners and Montana state university.

History: En. Sec. 1, Ch. 109, L. 1913; amd. Sec. 1, Ch. 54, L. 1915; amd. Sec. 1, Ch. 13, L. 1919; re-en. Sec. 4487, R.C.M. 1921; re-en. Sec. 4487, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1949; R.C.M. 1947, 16-1130.

7-21-3204 through 7-21-3210 reserved.

7-21-3211. Employment of stock inspector. (1) Whenever the board of county commissioners is satisfied, from its own knowledge or from facts and circumstances submitted to it by the county attorney or sheriff, that livestock is being stolen, slaughtered, or otherwise disposed of contrary to law in such county and in such manner that the public officers of the county are not in position to apprehend the criminals or obtain the necessary evidence upon which to base a prosecution, the board of each county, except in counties of the first class, has the power to employ a stock inspector.

(2) Whenever such a stock inspector is so employed, the employment shall be only for the case or cases then under investigation. During the existence of such appointment, he shall be vested with the same police power and authority as the sheriff, within the limitation of the purposes for which he is appointed.

History: **En. Sec. 2, Ch. 61, L. 1909; re-en. Sec. 4484, R.C.M. 1921; re-en. Sec. 4484, R.C.M. 1935; R.C.M. 1947, 16-1124(part).**

7-21-3212. Compensation of stock inspector. (1) Whenever such a stock inspector is so employed, his compensation shall be at the rate of not to exceed the sum of $7.50 per day and necessary expenses for the time actually engaged in such work, and he shall be paid by a warrant on the general fund of the county.

(2) Whenever a stock inspector is so employed in the investigation of a crime and a reward has been offered under 7-32-2301 for the apprehension and conviction of the party or parties guilty of such crime, such inspector shall not be entitled to any part of said reward.

History: **En. Sec. 2, Ch. 61, L. 1909; re-en. Sec. 4484, R.C.M. 1921; re-en. Sec. 4484, R.C.M. 1935; R.C.M. 1947, 16-1124(part).**

7-21-3213. Confidentiality of appointment of stock inspector. The proceedings and meetings of the board of county commissioners relating to the employment of a stock inspector shall not be made public until after the investigation of the crime or crimes by said inspector is completed, and any officer who divulges the name of the stock inspector employed or the purpose of his employment during such period shall be guilty of a misdemeanor.

History: **En. Sec. 3, Ch. 61, L. 1909; re-en. Sec. 4485, R.C.M. 1921; re-en. Sec. 4485, R.C.M. 1935; R.C.M. 1947, 16-1125.**

Part 33

Public Markets

7-21-3301. Establishment of markets and market houses. In addition to the powers specifically granted by the laws of the state and such other limitations and exceptions contained in the existing statutes of the state in reference to the debt-incurring power of boards of county commissioners, the boards of county commissioners in every county in Montana shall have the power to erect market houses to be located at the county seats of their respective counties, to establish and regulate markets, and to acquire the property necessary therefor.

History: **En. Sec. 1, Ch. 28, L. 1917; re-en. Sec. 4488, R.C.M. 1921; re-en. Sec. 4488, R.C.M. 1935; R.C.M. 1947, 16-1136.**

7-21-3302. Acquisition of property for establishment and maintenance of public markets. The boards of county commissioners within Montana may acquire by purchase, lease, construction, or otherwise suitable grounds, buildings, and quarters for the establishing, conducting, operating, and maintaining of a public market open to the farmers, gardeners, and actual producers of farm products within their respective counties.

History: **En. Sec. 2, Ch. 28, L. 1917; re-en. Sec. 4489, R.C.M. 1921; re-en. Sec. 4489, R.C.M. 1935; R.C.M. 1947, 16-1137(part).**

7-21-3303. Opening of public market. The boards of county commissioners of the counties of the state availing themselves of the provisions of this part must, as soon as the lands and premises necessary therefor have been acquired, cause to be opened and maintained at the county seats of their respective counties and in the quarters so acquired an open public market for the benefit of the farmers, gardeners, and actual producers of farm products, for the sale by the producers thereof direct to the consumers of butter, eggs, cheese, meats, vegetables, and all other farm products raised or produced for domestic consumption, wherein the producers thereof within each county may display and offer for sale his or her products direct to the consumers thereof within said counties.

History: **En. Sec. 2, Ch. 28, L. 1917; re-en. Sec. 4489, R.C.M. 1921; re-en. Sec. 4489, R.C.M. 1935; R.C.M. 1947, 16-1137(part).**

7-21-3304. Days of operation of market. All county markets established under the provisions of this part shall be open to the public not less than 2 days in each week.

History: **En. Sec. 5, Ch. 28, L. 1917; re-en. Sec. 4492, R.C.M. 1921; re-en. Sec. 4492, R.C.M. 1935; R.C.M. 1947, 16-1140(part).**

7-21-3305. Notice of rules and days of operation. The rules adopted for the government of the county market, together with a notice of the market days in each week, shall be published by the county commissioners once in each year in every newspaper printed and published in their respective counties for a period of not less than 2 successive weeks, the first publication thereof to be made not less than 2 weeks prior to the opening of the markets established hereunder in each county and the future annual publications thereof to be made at such time as may be ordered by the boards of county commissioners.

History: **En. Sec. 5, Ch. 28, L. 1917; re-en. Sec. 4492, R.C.M. 1921; re-en. Sec. 4492, R.C.M. 1935; R.C.M. 1947, 16-1140(part).**

7-21-3306. Payment of expenses incurred in connection with public market. The expense of the establishment and maintenance of the markets provided for in this part shall be paid by the boards of county commissioners from the general funds of the counties, except such portions of the expense of operating and maintaining the same as may be derived from the revenues provided for in this part.

History: **En. Sec. 6, Ch. 28, L. 1917; re-en. Sec. 4493, R.C.M. 1921; re-en. Sec. 4493, R.C.M. 1935; R.C.M. 1947, 16-1141.**

7-21-3307. Gross proceeds charge. (1) Every producer of products availing himself or herself of the use of the marketplace established under the provisions of this part shall pay or cause to be paid, at the close of each day's business, to the market master thereof a charge of 5% of his or her gross sales.

(2) The funds thus collected by the market master shall be turned in to the county treasury to the credit of the county market fund and shall be used by the county treasurer toward the payment of the expenses of operating and maintaining such public market.

History: **En. Sec. 4, Ch. 28, L. 1917; re-en. Sec. 4491, R.C.M. 1921; re-en. Sec. 4491, R.C.M. 1935; R.C.M. 1947, 16-1139(part).**

7-21-3308. Effect of failure to pay gross proceeds charge. Every person, firm, or corporation availing themselves of the privileges provided hereby who shall fail, neglect, or refuse to so pay to the market master of the county market of any county of this state 5% of the gross sales made by them within such market shall be guilty of a misdemeanor and upon the conviction thereof shall be fined not less than $10 or more then $100 and imprisoned in the county jail until such fine be paid, in the manner provided by law, and shall be forever thereafter disbarred from the privileges afforded by the county markets established at the county seats of every county in Montana.

History: **En. Sec. 4, Ch. 28, L. 1917; re-en. Sec. 4491, R.C.M. 1921; re-en. Sec. 4491, R.C.M. 1935; R.C.M. 1947, 16-1139(part).**

7-21-3309. Speculative or resale purchases prohibited. No rules adopted for the government of any market established under this part shall permit any person, firm, or corporation to purchase the products displayed and offered for sale for the purpose of speculating thereon by again offering the same for sale within such public marketplace. The privileges of the markets established under the provisions of this part shall be extended only to the actual producers of the products offered for sale.

History: **En. Sec. 7, Ch. 28, L. 1917; re-en. Sec. 4494, R.C.M. 1921; re-en. Sec. 4494, R.C.M. 1935; R.C.M. 1947, 16-1142.**

7-21-3310 through 7-21-3320 reserved.

7-21-3321. Market master. In each of the counties of this state wherein the office of county auditor exists, the county auditor shall be ex officio the county market master. In all other counties which may avail themselves of the provisions of this part wherein no office of county auditor is maintained, the county clerk of such county shall be ex officio market master.

History: **En. Sec. 3, Ch. 28, L. 1917; re-en. Sec. 4490, R.C.M. 1921; re-en. Sec. 4490, R.C.M. 1935; R.C.M. 1947, 16-1138(part).**

7-21-3322. Role of market master. (1) Such market master shall, under the supervision and approval of the board of county commissioners, make all necessary rules for the establishment, maintenance, operation, and control of the markets established hereunder in the respective counties of the state.

(2) It shall be the duty of such market master:

(a) to cause the market buildings, grounds, and premises to be kept reasonably clean and in proper sanitary condition;

(b) to arrange for stalls and spaces in such manner as to best suit the convenience of both buyers and sellers;

(c) to see that the laws of Montana in reference to weights and measures are enforced and observed;

(d) to cause order to be preserved during the time such market shall be open and in operation;

(e) to prevent and remove obstructions from the marketplace or grounds;

(f) to remove all vagrants, prevent disorderly conduct, and prevent disorderly persons from loitering in said market buildings, space, or grounds during the market hours;

(g) to cause all offenses against the laws of Montana in relation to the inspection of foods or the sale of unclean, unwholesome, damaged, or spoiled meats, farm products, vegetables, or provisions of any kind to be prosecuted;

(h) to designate proper means of supervising and accounting for the sales therein made and collecting the commissions hereinafter provided for; and

(i) to generally supervise and control the operations of the public markets established under the provisions of this part.

History: En. Sec. 3, Ch. 28, L. 1917; re-en. Sec. 4490, R.C.M. 1921; re-en. Sec. 4490, R.C.M. 1935; R.C.M. 1947, 16-1138(part).

Part 34

County Fairs

7-21-3401. Authorization to create county fair commission. (1) The board of county commissioners may, at any regular meeting, appoint from the electors of the county five responsible persons to constitute a county fair commission, three of the members to be appointed for a term of 2 years and two for a term of 1 year and until their successors are appointed.

(2) Each year thereafter, the board of county commissioners shall appoint members of the county fair commission to succeed the members whose terms then expire.

History: En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935; re-en. Sec. 4545, R.C.M. 1935; R.C.M. 1947, 16-1401(part); amd. Sec. 5, Ch. 249, L. 1979.

7-21-3402. Term of office. The appointments subsequent to the initial appointments shall be for a term of 2 years.

History: En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927; amd. Sec. 1, Ch. 52, L. 1935; re-en. Sec. 4545, R.C.M. 1935; R.C.M. 1947, 16-1401(part).

7-21-3403. Qualifications for office. (1) Persons appointed as county fair commissioners shall be well qualified to perform the duties of organizing and successfully carrying on the county fair.

(2) In case there is in any county a fair association or a horticultural or agricultural society, the board of county commissioners may appoint said fair commission from the members of said fair association or horticultural or agricultural society, giving preference in said appointments to the officers of the association or society.

History: (1)En. Sec. 1, Ch. 67, L. 1903, re-en. Sec. 2927, Rev. C. 1907; amd. Sec. 1, Ch. 131, L. 1917; amd. Sec. 1, Ch. 139, L. 1921; re-en. Sec. 4545, R.C.M. 1921; amd. Sec. 1, Ch. 30, L. 1927;

amd. Sec. 1, Ch. 52, L. 1935; re-en. Sec. 4545, R.C.M. 1935; Sec. 16-1401, R.C.M. 1947; (2)En. Sec. 2, Ch. 52, L. 1935; re-en. Sec. 4545.1, R.C.M. 1935; Sec. 16-1402, R.C.M. 1947; R.C.M. 1947, 16-1401(part), 16-1402(part).

7-21-3404. Organization of county fair commission. Said commission shall organize by electing one of its members president and one of its members vice-president. The county treasurer shall be ex officio the treasurer. The secretary shall be appointed by the commission and may be a member of the commission.

History: En. Sec. 5, Ch. 67, L. 1903; re-en. Sec. 2931, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 3, Ch. 131, L. 1917; re-en. Sec. 4547, R.C.M. 1921; re-en. 4547, R.C.M. 1935; R.C.M. 1947, 16-1404(part).

7-21-3405. Compensation of county fair commissioners. (1) Each member of the commission is entitled to a salary of $25 a year as compensation for his services. If the secretary of the county fair commission is a member of the commission, then his salary shall be fixed by the commission in lieu of the salary of $25 a year.

(2) In addition to the salary provided by subsection (1), each commissioner may be allowed his actual and necessary expenses while fulfilling the duties of his office.

History: Ap. p. Sec. 3, Ch. 67, L. 1903; re-en. Sec. 2929, Rev. C. 1907; amd. Sec. 4, Ch. 131, L. 1917; re-en. Sec. 4548, R.C.M. 1921; re-en. Sec. 4548, R.C.M. 1935; Sec. 16-1405, R.C.M. 1947; Ap. p. Sec. 5, Ch. 67, L. 1903; re-en. Sec. 2931, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 3, Ch. 131, L. 1917; re-en. Sec. 4547, R.C.M. 1921; re-en. 4547, R.C.M. 1935; Sec. 16-1404, R.C.M. 1947; R.C.M. 1947, 16-1404(part), 16-1405; amd. Sec. 6, Ch. 249, L. 1979.

7-21-3406. Powers of county fair commission. Said county fair commissioners shall have control and operation of the fair and the supervision and management of the fairgrounds and also the leasing of buildings and fairgrounds and shall return to the fair fund of the county all revenue obtained from the leasing or renting of the same.

History: En. Sec. 2, Ch. 52, L. 1935; re-en. Sec. 4545.1, R.C.M. 1935; R.C.M. 1947, 16-1402(part).

7-21-3407. Duties of county fair commission. Said commission shall do all things necessary to hold a successful county agricultural fair in their respective counties and shall have charge of all fairgrounds and fair property.

History: En. Sec. 4, Ch. 67, L. 1903; re-en. Sec. 2930, Rev. C. 1907; superseded by Sec. 3, Ch. 30, L. 1911; amd. Sec. 2, Ch. 131, L. 1917; re-en. Sec. 4546, R.C.M. 1921; re-en. Sec. 4546, R.C.M. 1935; R.C.M. 1947, 16-1403.

7-21-3408. Acquisition of property for fair purposes. (1) The board of county commissioners of any county in Montana may purchase, receive by donation, or own and hold a tract of land in their respective county, not exceeding 160 acres, as county fairgrounds and an additional tract of land in their respective county, not exceeding 80 acres, as junior fairgrounds. These lands may be used by the county fair commission for the purpose of promoting the interests of horticulture, agriculture, and stockraising.

(2) The board which shall avail itself of the foregoing provisions may purchase, erect, construct, and maintain permanent improvements on such fairgrounds and junior fairgrounds.

History: En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; R.C.M. 1947, 16-1407(part).

7-21-3409. Lease of county fairgrounds and buildings. (1) Boards of county commissioners are hereby authorized to lease for limited periods of time county fairgrounds and buildings thereon on such terms as they shall deem proper. No lease shall be executed to permit the use of said premises during any time within 3 weeks prior to the holding of a county fair.

(2) In the event same are leased for entertainment purposes, the county commissioners shall collect an amount deemed proper by them, but not in excess of 20% of the gross receipts taken in by the lessee. Said property shall not be leased unless the lessee shall give a bond such as the board may deem sufficient.

(3) No lease shall be executed unless the lessee shall agree to furnish adequate police protection over all property so leased. Any lease shall be subject to immediate cancellation by the board in case the lessee fails to maintain order or to properly police the grounds.

(4) All money received from the leasing of fairgrounds shall be deposited in the poor fund of the county.

(5) Nothing herein shall be construed to prevent county commissioners from preventing schools to use fairgrounds for athletic or other public school purposes.

History: (1) thru (3), (5)En. Sec. 1, Ch. 11, Ex. L. 1933; re-en. Sec. 4513.3, R.C.M. 1935; Sec. 16-1154, R.C.M. 1947; (4)En. Sec. 2, Ch. 11, Ex. L. 1933; re-en. Sec. 4513.4, R.C.M. 1935; Sec. 16-1155, R.C.M. 1947; R.C.M. 1947, 16-1154, 16-1155.

7-21-3410. Funding of county fair activities. (1) The board of county commissioners of their respective counties may appropriate annually, out of the general fund of the county treasury and to the county fair commission, a sum not to exceed $3,500, to be expended by the county fair commission for the purpose of holding a county fair and/or junior fair and for advertising the products and resources of their county.

(2) In addition to the appropriation above provided for or in lieu thereof, the county commissioners of any county in Montana shall have the power to levy an ad valorem tax of 1 ½ mills or less on each dollar of taxable property in such county for the purpose of securing, equipping, maintaining, and operating a county fair and/or a junior fair, including the purchase of land for such purposes and the erection of such buildings and other appurtenances as may be necessary.

(3) The funds derived from such appropriation or tax levy shall be kept in a separate fund by the county treasurer and shall be paid out by the treasurer on order signed by the president and secretary of the fair commission.

History: (1), (2)En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; amd. Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927; re-en. Sec. 4549, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971; Sec. 16-1406, R.C.M. 1947; (3)En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; Sec. 16-1407, R.C.M. 1947; R.C.M. 1947, 16-1406(part), 16-1407(part).

7-21-3411. Restriction on use of appropriation or tax money. No portion of the appropriation or tax levy provided for in 7-21-3410 shall be expended for horseracing.

History: En. Sec. 2, Ch. 67, L. 1903; re-en. Sec. 2928, Rev. C. 1907; am.d Sec. 5, Ch. 131, L. 1917; re-en. Sec. 4549, R.C.M. 1921; amd. Sec. 1, Ch. 32, L. 1927; re-en. Sec. 4549, R.C.M. 1935; amd.

Sec. 1, Ch. 176, L. 1947; amd. Sec. 1, Ch. 134, L. 1955; amd. Sec. 1, Ch. 154, L. 1971; R.C.M. 1947, 16-1406(part).

7-21-3412. Appropriation of money for expenses of exhibiting at other fairs. The board of county commissioners of any county in Montana may appropriate each year the sum of $1,000 (or so much thereof as may be necessary) out of the general funds of the county for the purpose of defraying the expenses of collecting, transporting, and taking care of any exhibit from such county at any state fair, county agricultural fair, 4-H club or future farmers fair, seed show, or other agricultural exhibit held within the state or county.

History: En. Sec. 1, Ch. 165, L. 1907; Sec. 2932, Rev. C. 1907; amd. Sec. 6, Ch. 131, L. 1917; amd. Sec. 2, Ch. 139, L. 1921; re-en. Sec. 4550, R.C.M. 1921; re-en. Sec. 4550, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1945; amd. Sec. 2, Ch. 176, L. 1947; R.C.M. 1947, 16-1407(part).

7-21-3413. Capital improvement fund authorized. The fair commission of any county in Montana is authorized to establish, by a vote of the majority of the commission, a capital improvement fund for the replacement and acquisition of property, buildings, or equipment costing more than $5,000 and having a useful life of 5 years or more.

History: En. 16-1407.1 by Sec. 2, Ch. 19, L. 1975; R.C.M. 1947, 16-1407.1.

7-21-3414. Management of capital improvement fund. (1) Money for the capital improvement fund shall be derived from the unexpended money obtained by the fair commission under 7-21-3410.

(2) The capital improvement fund may not exceed at any time a competent estimate of the cost of the adopted capital improvement program.

(3) All interest earned on the money in the capital improvement fund shall be paid into the county general fund.

History: En. 16-1407.2 by Sec. 3, Ch. 19, L. 1975; R.C.M. 1947, 16-1407.2.

7-21-3415 through 7-21-3420 reserved.

7-21-3421. Authorization to create multicounty fair district. (1) Two or more counties within the state, constituting a contiguous territory, may group themselves together and form a fair district.

(2) The board of county commissioners of any such county, upon application from the regularly appointed county fair commission, may by resolution declare its intention to join in and form a fair district.

History: En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 7, Ch. 249, L. 1979.

7-21-3422. Notice of intention to create fair district — hearing. Notice of the resolution of intent to create a fair district shall be published in two regular weekly issues of a newspaper in the county, setting forth the date on which a hearing shall be had on the resolution by the taxpayers and residents of the county and at which time objections will be heard.

History: En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 8, Ch. 249, L. 1979.

7-21-3423. Decision by board of county commissioners. After the consideration of objections if there are any, the county commissioners may authorize the county fair commission to join with any existing contiguous district or to form a fair district with counties in contiguous territory.

History: **En. Sec. 1, Ch. 178, L. 1931; re-en. Sec. 4550.1, R.C.M. 1935; R.C.M. 1947, 16-1408(part); amd. Sec. 9, Ch. 249, L. 1979.**

7-21-3424. Authorization for additional counties to join fair district. A contiguous county or counties forming a territory contiguous to a fair district may be added to such fair district after its formation under the same provisions as set forth in 7-21-3421 through 7-21-3423, provided the board of directors of the fair district determines that it is to the best interest of said district that such county or counties be added.

History: **En. Sec. 7, Ch. 178, L. 1931; re-en. Sec. 4550.7, R.C.M. 1935; R.C.M. 1947, 16-1414.**

7-21-3425. Board of directors of fair district. (1) The members of the respective county fair commissions of the counties forming a fair district constitute a board of directors for the fair district.

(2) After a district has been formed and a county is added thereto, the members of the county fair commission of the county added to the fair district are likewise members of the board of directors of the fair district.

History: **En. Sec. 2, Ch. 178, L. 1931; re-en. Sec. 4550.2, R.C.M. 1935; R.C.M. 1947, 16-1409; amd. Sec. 10, Ch. 249, L. 1979.**

7-21-3426. Organization of board and conduct of business. (1) The board of directors shall meet at the place of business, established under 7-21-3427, during the month of December of each year and organize, electing a chairman, vice-chairman, and secretary for the board.

(2) Such subsequent meetings shall be held as may be found necessary for the conduct of the district fair.

(3) The board of directors shall have power to employ a secretary, whom they may vest with managerial powers, and they shall also appoint a treasurer. The office of secretary may be combined with that of treasurer.

(4) The board of directors shall see that:

(a) all records and accounts are properly kept, supervised, and approved;

(b) proper vouchers evidence all disbursements of money; and

(c) the records are at all reasonable hours open to the public.

History: **En. Secs. 3, 4, Ch. 178, L. 1931; re-en. Secs. 4550.3, 4550.4, R.C.M. 1935; R.C.M. 1947, 16-1410(part), 16-1411(part); amd. Sec. 11, Ch. 249, L. 1979.**

7-21-3427. Role of fair district board of directors. (1) The board of directors shall be charged with the care and custody of all property of the district fair. They shall have power to acquire for the benefit of the district such real and personal property as may be required in connection with the conduct of district fairs.

(2) They shall be vested with the general powers granted commissioners of county fairs. They shall have power to do everything necessary in connection with the holding of the annual district fair, including the employment of labor, awarding of prizes, making of exhibition contracts, charging admission and entrance fees, and everything that is necessary in conducting the business of the district. They shall fix the salaries of all employees and prescribe the time and manner of payment.

(3) They shall designate a place within the fair district where the fairgrounds shall be located, and this place shall thereafter be the place of business of said district.

(4) They shall formulate in writing and file in the district office all plans adopted by them from time to time in connection with the conduct of the affairs of said district.

History: Ap. p. Sec. 3, Ch. 178, L. 1931; re-en. Sec. 4550.3, R.C.M. 1935; Sec. 16-1410, R.C.M. 1947; Ap. p. Sec. 4, Ch. 178, L. 1931; re-en. Sec. 4550.4, R.C.M. 1935; Sec. 16-1411, R.C.M. 1947; R.C.M. 1947, 16-1410(part), 16-1411(part).

7-21-3428. Title to fair district property. The ownership of the real or personal property acquired by the fair district shall be vested in the joint ownership of the counties comprising the district or in one county for the benefit of the district, as may be provided for by the board of directors.

History: En. Sec. 6, Ch. 178, L. 1931; re-en. Sec. 4550.6, R.C.M. 1935; R.C.M. 1947, 16-1413.

7-21-3429. Preparation of fair district budget. (1) To raise the revenue necessary to hold district fairs, the board of directors shall meet during the first week of May of each year and make a budget of the amounts required in the conduct of the affairs of the district for the following year. The board shall deduct from the budget the probable income from the annual district fair and other exhibitions to be held by the district during the following year.

(2) The board shall then apportion the remaining balance among the various counties forming the district in proportion to the assessed property of each county as determined by the assessment rolls of the preceding year. By mutual agreement of the directors, the share apportioned to the county in which the fair is being conducted may be made larger than in other counties comprising the district.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3430. Certification of budget to boards of county commissioners. The secretary shall certify to each board of county commissioners the amount of the budget and the amount of revenue to be raised by the county for these purposes and shall file a certified copy thereof with the clerk of the board of county commissioners of each of the counties in the district on or before June 1 of each year.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3431. Meeting on fair district budget. The respective boards of county commissioners of the counties comprising the district shall meet in joint assembly with their county fair commissioners during the first week of June of each year and jointly consider the budget proposed by the board of directors of the district and give such approval or suggest such amendments or modifications as they think proper and desirable.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3432. Effect of failure of county commissioners to meet or take action. If the county commissioners fail to hold the joint meeting or fail to take any action, then the budget certified by the secretary of the fair district shall be approved without further action and the sums of money apportioned to the county shall be the sums to be raised by special levy for this purpose.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3433. Authorization for mill levy. (1) For the purpose of raising the revenues, the board of county commissioners of each county in the district shall annually make a levy to raise the required sum apportioned to the respective county.

(2) However, the levy shall not exceed 1 mill on the dollar of the taxable value of all the taxable property in the county, except in the case of the county in which the fair is being conducted. In this county, the levy shall not exceed 1 ½ mills on the dollar of taxable property in the county.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3434. Transfer of county fair money to fair district. In addition to the levy authorized by 7-21-3433, any and all money available for the holding of county fairs may be allotted and transferred to the use of the district fair, as the respective county fair commissioners may elect.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

7-21-3435. Management of fair district money — district fair fund. (1) The funds available to a district fair shall, on the first Monday in August or as soon thereafter as may be possible, be deposited with the county treasurer of the county in which the district fair is to be held and credited to a fund to be known as the district fair fund and shall be held and paid out in the same manner as the county fair fund, except that it shall be paid out on district fair board warrants signed by the chairman or the vice-chairman and the secretary of the district fair board.

(2) The treasurer of the county in which the district fair will be held shall carry the money received from the various counties in the district in the regular county fair fund in the same manner as regular county fair money, payable, however, only on district fair warrants.

History: En. Sec. 5, Ch. 178, L. 1931; re-en. Sec. 4550.5, R.C.M. 1935; amd. Sec. 38, Ch. 566, L. 1977; R.C.M. 1947, 16-1412(part).

Parts 35 through 40 reserved

Part 41

Municipal Licensing Authority

7-21-4101. General licensing power of municipalities. (1) The city or town council has power:

(a) to license by ordinance all industries, pursuits, professions, and occupations and to impose penalties for failure to comply with such license requirements;

(b) to fix the amount, terms, and manner of issuing and revoking licenses.

(2) The council may refuse to issue licenses when it may deem it best for the public interests.

History: **Ap. p. Subds. 3, 4, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.2, 5039.3, R.C.M. 1935; Secs. 11-903, 11-904, R.C.M. 1947; Ap. p. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; Sec. 84-4737, R.C.M. 1947; R.C.M. 1947, 11-903, 11-904, 84-4737(part).**

7-21-4102. Collection of license fees. The city treasurer must collect the license fees authorized by 7-21-4101 in the manner and at the time prescribed by ordinance.

History: **En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; R.C.M. 1947, 84-4737(part).**

7-21-4103. Issuance of licenses. The city clerk must issue such licenses.

History: **En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R.C.M. 1921; re-en. Sec. 5224, R.C.M. 1935; R.C.M. 1947, 84-4737(part).**

Part 42

Municipal Regulation of Business and Commodities

7-21-4201. Regulation of certain activities. (1) The city or town council may license, tax, and regulate:

(a) auctioneers, peddlers, pawnbrokers, and secondhand and junk shops;

(b) motor vehicles and motor vehicle bodies, except those on commercial property, which are not otherwise taxed;

(c) drivers, porters, tenpin alleys, shooting galleries, shows, circuses, street parades, theatrical performances, and places of amusement within the city or town.

(2) The power to license, tax, and regulate circuses and shows of like character extends 3 miles beyond the limits of the city or town.

(3) The council of any city or town may enact necessary ordinances providing for the licensing, taxation, and regulation of soft drink establishments and all pool and billiard halls. The city or town council may regulate and limit the number of such licenses issued and provide by ordinance that the total number of such licenses may not exceed the number fixed by the city or town council by ordinance.

History: **(1), (2)En. Subd. 16, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.15, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1965; Sec. 11-918, R.C.M. 1947; (3)En. Sec. 1, Ch. 136, L. 1923, re-en. Sec. 5039.84, R.C.M. 1935; Sec. 11-987, R.C.M. 1947; R.C.M. 1947, 11-918, 11-987; amd. Sec. 12, Ch. 249, L. 1979.**

7-21-4202. Regulation of foodstuffs. The city or town council has power to provide for and regulate the inspection of beef, pork, flour, meal, and all provisions and oils; to regulate the inspection of milk, water, butter, lard, and other provisions; to regulate the vending of meat, poultry, fish, game, and vegetables; to restrain and punish the forestalling of provisions.

History: **En. Subd. 22, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.21, R.C.M. 1935; R.C.M. 1947, 11-924.**

7-21-4203. Authority to weigh, measure, and regulate certain commodities. The city or town council has power to regulate the inspection, weighing, and measuring of wood, coal, stone, corn or other grain, and hay within the city or town.

History: En. Subd. 23, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.22, R.C.M. 1935; R.C.M. 1947, 11-925.

7-21-4204. Regulation of location of businesses, factories, and steam boilers. The city or town council has power:

(1) to regulate the location of slaughterhouses, breweries, distilleries, livery stables, foundries, blacksmith shops, planing mills, soap factories, and tanneries within the city or town and to prohibit any offensive and unwholesome establishments within the city or town limits or within 3 miles thereof;

(2) to regulate the location of steam boilers.

History: En. Subds. 42, 70, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.41, 5039.69, R.C.M. 1935; R.C.M. 1947, 11-944, 11-972(part).

7-21-4205. Licensing and regulating of vehicles engaged in transporting persons and property. The city or town council has power to license and regulate automobiles, trucks, hackney carriages, carts, omnibuses, wagons, and drays and to fix the rate to be charged for the carriage of persons and property within the city or town and to the public works and property without the limits of the city or town.

History: En. Subd. 54, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.53, R.C.M. 1935; R.C.M. 1947, 11-956.

7-21-4206. Control of erection of signs and awnings. The city or town council has power to regulate the putting up of signs and awnings.

History: En. Subd. 70, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.69, R.C.M. 1935; R.C.M. 1947, 11-972(part).

7-21-4207. Authority to require records for pawn, secondhand, and junk shops. The city or town council has power to require the owners and keepers of pawn, secondhand, and junk shops to keep a record of all articles purchased or pawned to them. The record and the articles purchased or pawned are subject to the inspection of all police officers of the city or town.

History: En. Subd. 17, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.16, R.C.M. 1935; R.C.M. 1947, 11-919.

7-21-4208. Regulation of purchases from minors by pawn, secondhand, and junk shops. The city or town council has power to prevent the keepers of pawn, secondhand, and junk shops from the purchasing of any article from a minor without the written consent of the parent or guardian of such minor.

History: En. Subd. 18, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.17, R.C.M. 1935; R.C.M. 1947, 11-920.

7-21-4209. Establishment and supervision of markets. The city or town council has power to establish markets and market houses and provide for the supervision and use thereof.

History: En. Subd. 21, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.20, R.C.M. 1935; R.C.M. 1947, 11-923.

7-21-4210. Regulation of dance houses. The city or town council has power to regulate or prohibit dance houses within the city or town limits and within 3 miles thereof.

History: En. Subd. 19, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.18, R.C.M. 1935; R.C.M. 1947, 11-921.

7-21-4211. Repealed. Sec. 2, Ch. 471, L. 1981.

History: En. Subd. 71, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.70, R.C.M. 1935; R.C.M. 1947, 11-973.

7-21-4212. Local government permits for boxing and wrestling matches — safety — tax. (1) No person may sponsor or promote any prizefight or public sparring, boxing, or wrestling match or exhibition without a permit issued and in effect as provided in this section. No person may provide physical facilities for or act as a second or principal in any prizefight or public sparring, boxing, or wrestling match or exhibition, knowing or having reasonable cause to believe that the sponsor or promotor of such event does not have a permit issued and in effect as provided in this section.

(2) A local government may permit and regulate prizefights or public sparring, boxing, or wrestling matches or exhibitions subject to the following:

(a) The local government governing body must, prior to the issuance of any permit, adopt rules, by ordinance or resolution, governing prizefights and public sparring, boxing, and wrestling matches. The rules shall meet or exceed the safety codes required by recognized professional boxing and wrestling organizations and provide reasonable measures for the fair conduct of the matches or exhibitions and for the protection of the health and safety of the principals. The rules shall require a physical examination of each principal prior to each match or exhibition and the attendance of a licensed physician at ringside and shall provide for the qualifications of judges, referees, and seconds and for the payment of such officials by the promoter.

(b) The local government governing body shall require a permittee to provide a surety bond or cash deposit in an amount determined sufficient by the governing body. Any person injured by the willful, malicious, or wrongful act of the permittee may bring an action on the surety bond or deposit in his own name to recover damages suffered as a result of such act by the permittee.

(c) The local government may charge the permittee a fee, commensurate with the cost of providing the certificate.

(d) For an event under this section, only one permit is required. A county shall regulate such events within the county but not within a municipality, and a municipality shall regulate such events within its municipal boundaries.

(3) A local government may levy a tax, at a rate determined by the local government governing body, on the gross proceeds of an event for which they have issued a permit under the provisions of this section. The proceeds of the tax shall be paid into the general fund of the local government.

(4) Nothing in this section may be construed to require a permit or tax for sparring, boxing, or wrestling matches or exhibitions held as a part of an organized amateur athletic program or as a part of the athletic program of a school or college. However, such an event must be conducted fairly and with reasonable measures to protect the health and safety of the participants.

(5) Any person who violates any provision of this section is guilty of a misdemeanor and is punishable as provided in 46-18-212.

History: **En. Sec. 1, Ch. 471, L. 1981.**

Compiler's Comments

1981 Title: The title to SB 442 (Ch. 471, L. 1981) read: "An act to provide for county and municipal regulation of boxing and wrestling matches; requiring permits therefor; requiring safety rules; authorizing the collection of taxes on the proceeds of such events; repealing section 7-21-4211, MCA; and providing an effective date."

Effective Date: Section 3, Ch. 471, L. 1981, provided: "This act is effective July 1, 1981."

CHAPTER 22

WEED AND PEST CONTROL

Part 1 — Control of Dutch Elm Disease

Section
7-22-101. Purpose.
7-22-102. Definitions.
7-22-103. Department to adopt rules.
7-22-104. Experimental programs.
7-22-105. Reports to the legislature.
7-22-106. Department to accept funds — responsibility and liability limited.
Sections 7-22-107 through 7-22-110 reserved.
7-22-111. Removal of diseased elm trees — assessment of costs.
7-22-112. Approval of disease control programs — eligibility for grants.
7-22-113. Grants to local governments.
7-22-114. Limitations on grants.
7-22-115. Subsidies to certain owners.
7-22-116. Appointment of tree inspector — certification.
7-22-117. Financing.
7-22-118. Deposit of proceeds in a separate fund.

Parts 2 through 20 reserved

Part 21 — County Weed Control

7-22-2101. Definitions.
7-22-2102. Weed control and weed seed extermination districts established.
7-22-2103. County weed board.
7-22-2104. Term of office.
7-22-2105. Organization of county weed board and compensation.
7-22-2106. Noxious weeds and seeds declared nuisance.
7-22-2107. Unlawful to willfully permit noxious weeds to go to seed.
7-22-2108. Violations.
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7-22-2123. Operation of weed control program.
7-22-2124. Destruction of weeds by supervisors — report to county clerk.
7-22-2125. Procedure for destruction of weeds intermingled with crops.
7-22-2126. Embargo to prevent introduction of noxious weeds and seeds.
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Sections 7-22-2128 through 7-22-2140 reserved.
7-22-2141. Noxious weed fund authorized.
7-22-2142. Sources of money for noxious weed funds.
7-22-2143. Determination of cost of weed control program.
7-22-2144. Payment of cost of weed control program.
7-22-2145. Expenditures from noxious weed fund.
7-22-2146. Financial assistance to landowners for weed control.

7-22-2147. Allocation of costs when control program carried out by supervisors.
7-22-2148. Tax liability for payment of weed control expenses.
7-22-2149. Responsibility for assessments and taxes for weed control levied on leased state lands.
7-22-2150. Cooperation with state and federal-aid programs.

Part 22 — Rodent Control Districts

7-22-2201 through 7-22-2206. Repealed. Sec. 21, Ch. 391, L. 1981.
7-22-2207. Definitions.
7-22-2208. Application to state lands.
7-22-2209. Application to leased land.
7-22-2210. Rodent control districts authorized.
7-22-2211. Petition to create district — hearing.
7-22-2212. Notice of hearing.
7-22-2213. Objection to district.
7-22-2214. Hearing — decision.
7-22-2215. Rodent control board.
7-22-2216. Board powers.
Sections 7-22-2217 through 7-22-2220 reserved.
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Part 41 — Municipal Weed Control

7-22-4101. Control of noxious weeds within municipality.

Part 1

Control of Dutch Elm Disease

7-22-101. Purpose. The legislature finds that an epidemic of Dutch elm disease is occurring in Montana which threatens the natural environment. Immediate action is therefore necessary to provide funds to assist local governments in the implementation of Dutch elm disease control programs by conducting reforestation, sanitation, and wood utilization or disposal systems, increasing public awareness of Dutch elm disease, accelerating training of tree inspectors and research for disease prevention, and subsidizing private property owners for the removal of diseased elm trees.

History: En. Sec. 1, Ch. 535, L. 1979.

7-22-102. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of agriculture.

(2) "Local government" means any political subdivision, including any city or town, whether exercising self-government powers or general government powers, county, or any combination formed under the Interlocal Cooperation Act.

(3) "Reforestation" means the replacement of elm trees removed from public property as part of an approved disease control program.

(4) "Public property" includes private property within 5 feet of the boulevard or street terrace in any city which has enacted an ordinance on or before July 1, 1981, that prohibits or requires a permit for the planting of trees in the public right-of-way.

(5) "Sanitation" means the identification, inspection, or disruption of a common root system and girdling, trimming, removal, and disposal of dead or diseased wood of elm or oak shade trees.

(6) "Wood utilization or disposal system" means facilities, equipment, or systems used for the removal and disposal of diseased trees.

History: **En. Sec. 2, Ch. 535, L. 1979.**

7-22-103. Department to adopt rules. (1) The department shall adopt rules that will apply to local governments. A rule will not apply to a local government if an ordinance is adopted which is more stringent as determined by the department.

(2) The rules shall prescribe control measures to be used to prevent the spread of Dutch elm disease and shall include the following:

(a) qualifications for tree inspectors;

(b) methods to be used for identifying diseased shade trees;

(c) procedures for giving reasonable notice of inspection of private real property;

(d) measures for the removal of any elm tree that may contribute to the spread of Dutch elm disease;

(e) methods of reforestation in areas under an approved Dutch elm disease control program; and

(f) any other rule considered by the department as necessary to insure that approved disease control programs will prevent the spread of Dutch elm disease.

History: **En. Sec. 3, Ch. 535, L. 1979.**

Compiler's Comments

Statement of Intent. The statement of intent attached to HB 875 (Ch. 535, L. 1979) provided: "HB 875 requires the Department of Agriculture to adopt rules to control the spread of Dutch elm disease in Montana. Section 3 of the bill specifies the rules that the department may adopt."

7-22-104. Experimental programs. The department may establish experimental programs for sanitation or treatment of elm tree diseases. The department may make grants to local governments or enter into contracts with municipal, state, or federal agencies in connection with experimental elm tree disease control programs.

History: **En. Sec. 11, Ch. 535, L. 1979.**

7-22-105. Reports to the legislature. On or before January 31 of each year, the department shall report to the legislature on the preceding year's approved disease control programs and any experimental programs conducted pursuant to 7-22-104.

History: **En. Sec. 12, Ch. 535, L. 1979.**

Compiler's Comments

Commissioner correction. A reference to "[section 12]" was changed to 7-22-104, which corresponds to section 11, by the Code Commissioner, 1979, to correct a typographical error.

7-22-106. Department to accept funds — responsibility and liability limited. The department is authorized to accept funds from any source available for use in this program. The responsibility and liability of the department to conduct or participate in this program shall be limited to the amount of funds available.

History: **En. Sec. 13, Ch. 535, L. 1979.**

7-22-107 through 7-22-110 reserved.

7-22-111. Removal of diseased elm trees — assessment of costs. (1) Local governments with Dutch elm disease control programs approved by the department may inspect private real property after giving reasonable notice for the presence of Dutch elm disease.

(2) An owner of the real property on which a diseased elm tree is located may be required to remove or treat the tree within the period of time and in the manner established by the department.

(3) Diseased elm trees that are not removed or treated by approved methods by the department, after issuance of an order to that effect by the local government, may be declared a public nuisance and removed or treated by the local government. The local government may assess an amount up to the actual expense upon the landowner, and the assessment shall be a lien on the property. In addition a local government may assess to the abutting properties up to 50% of the actual expenses of treating or removing with approved methods diseased elm trees located on street terraces or boulevards, and the assessment constitutes a lien on the property.

History: **En. Sec. 4, Ch. 535, L. 1979.**

7-22-112. Approval of disease control programs — eligibility for grants. The department, after notice and an opportunity for a hearing, shall approve any program for the control of Dutch elm disease submitted to the department that complies with the rules adopted by the department pursuant to 7-22-103 and that is determined to be an effective program for preventing the spread of Dutch elm disease. A disease control program must be approved before the local government is eligible for grants available in 7-22-113. A local government may make application for a grant at the same time approval of a disease control program is sought.

History: **En. Sec. 5, Ch. 535, L. 1979.**

7-22-113. Grants to local governments. (1) The department may, within the limit of appropriations provided, make grants to local governments with approved disease control programs for the partial funding of sanitation and reforestation programs.

(2) The department shall make rules for the administration of grants authorized by this section. The rules shall establish and contain as a minimum:

(a) procedures for grant applications;

(b) conditions and procedures for the administration of grants; and

(c) such other matters as the director may find necessary for the proper administration of the grant program.

(3) Based on estimates of the costs for the succeeding quarter under an approved program of wood utilization and disposal systems, sanitation, and reforestation submitted by a local government, the department shall direct quarterly advance payments to be made by the state to the local government. The department shall direct adjustment of any overestimate in a succeeding quarter. A local government may elect to receive the proceeds of its sanitation and reforestation grants on a periodic cost reimbursement basis.

History: **En. Sec. 6, Ch. 535, L. 1979.**

7-22-114. Limitations on grants. (1) Grant payments for wood utilization and disposal systems made by the department pursuant to 7-22-113 may not exceed 50% of the total cost of the system.

(2) Grants to any local government for sanitation may not exceed 45% of sanitation costs approved by the department, including any amount of sanitation costs paid by special assessments, ad valorem taxes, federal grants, or other funds. A local government may not specially assess a property owner any amount greater than the amount of the tree's sanitation cost minus the amount of the tree's sanitation cost reimbursed by the department.

(3) Grants to local governments for reforestation may not exceed the lesser of 50% of the cost or $40 multiplied by the number of trees planted pursuant to the reforestation program and are limited for any local government in any year to grants for not more than the number of trees removed on public property in the sanitation program in the previous year, except during the first year of any approved disease control program.

History: En. Sec. 6, Ch. 535, L. 1979.

7-22-115. Subsidies to certain owners. A local government may provide subsidies to nonprofit organizations, to owners of private residential property of 5 acres or less, to owners of property used for a homestead of more than 5 acres but less than 20 acres, and to nonprofit cemeteries for the approved treatment or removal of diseased elm trees. An owner of property on which elm trees are located may contract with a local government to provide protection against the cost of approved treatment or removal of diseased elm trees or elm trees that will contribute to the spread of elm tree diseases. Under such contracts, the local government shall pay for the removal or approved treatment under such terms and conditions as may be determined by the governing body of the local government.

History: En. Sec. 7, Ch. 535, L. 1979.

7-22-116. Appointment of tree inspector — certification. (1) Each local government with an approved disease control program shall appoint a qualified person to be known as the tree inspector to administer the rules of the department or the more stringent local ordinances concerning elm tree disease in that disease control area. Two or more local governments may jointly appoint a tree inspector.

(2) Upon a determination by the department that a candidate for the position of the inspector is qualified, it shall issue a certificate to the tree inspector that he is so qualified. Any person certified as a tree inspector by the department is authorized to enter and inspect any public or private property in that disease control area that might harbor diseased elm trees, provided prior notice is given as required by rules of the department made pursuant to 7-22-103.

(3) The department may upon notice and an opportunity for a hearing decertify any tree inspector when it appears that the tree inspector has failed to act competently or in the public interest in the performance of his duties. Nothing in this subsection limits or otherwise affects the authority of the department to dismiss or suspend a tree inspector at its discretion, except as otherwise provided by law.

History: En. Sec. 8, Ch. 535, L. 1979.

7-22-117. Financing. (1) A local government may collect the amount assessed against the property under 7-22-111 as a special assessment.

(2) After a contract for the sanitation or approved treatment of trees on private property has been let or the work commenced, the local government may issue bonds financed by special assessments imposed upon the private property to defray the expense of the work.

History: En. Sec. 9, Ch. 535, L. 1979.

7-22-118. Deposit of proceeds in a separate fund. The proceeds of any tax levied, assessments and interest collected, or any bonds issued under 7-22-117 and any grants received under 7-22-113 must be deposited by the local government in a separate fund and expended only for the purposes authorized in this part.

History: En. Sec. 10, Ch. 535, L. 1979.

Parts 2 through 20 reserved

Part 21

County Weed Control

7-22-2101. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Commissioners" means the board of county commissioners.

(2) "District" means the area included within the boundaries of an organized weed control and weed seed extermination district.

(3) "Noxious weeds" or "weeds" means Canadian thistle (Cirsium arvense (L.) scop.), wild morning glory or bindweed (Convolvulus arvensis L.), whitetop (Lepidium draba L.), leafy spurge (Euphorbia virgata waldst. and kit.), Russian knapweed (Centaurea pieris pallas.), and such other weeds as may be defined and designated as noxious weeds by the board of county commissioners of each county, subject to the approval of the county extension agent or agricultural experiment station at Montana state university.

(4) "Seed" or "seeds" means the seed of any noxious weed.

(5) "Supervisors" means the persons appointed by the board of county commissioners to supervise the weed control and weed seed extermination within the county.

History: (1), (2), (4), (5)En. Sec. 1, Ch. 195, L. 1939; Secs. 16-1702, 16-1703, 16-1704, 16-1705, R.C.M. 1947; (3)En. Sec. 1, Ch. 195, L. 1939; amd. Sec. 1, Ch. 360, L. 1974; Sec. 16-1701, R.C.M. 1947; R.C.M. 1947, 16-1701(part), 16-1702(part), 16-1703, 16-1704, 16-1705; amd. Sec. 13, Ch. 249, L. 1979.

7-22-2102. Weed control and weed seed extermination districts established. A weed control and weed seed extermination district shall be formed in every county of this state and shall include all the land within the boundaries of the county.

History: En. 16-1709.1 by Sec. 1, Ch. 185, L. 1969; amd. Sec. 2, Ch. 360, L. 1974; R.C.M. 1947, 16-1709.1.

7-22-2103. County weed board. (1) The board of county commissioners of each county shall appoint a county weed board consisting of three or five members, and:

(a) if a three-member board, two members shall be rural agricultural landowners within the county and one member shall be a teacher of biology or a person with comparable expertise; or

(b) if a five-member board, three members shall be rural agricultural landowners within the county, one member shall be a resident of a city or town within the county, and one member shall be a teacher of biology or a person with comparable expertise.

(2) The county extension agent in each county is an ex officio member of that county's weed board.

(3) The supervisors are public officers.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part); amd. Sec. 14, Ch. 249, L. 1979.

7-22-2104. Term of office. (1) Except as provided in subsection (2), a member of a county weed board serves a term of 3 years and until the qualification of his successor.

(2) When a three-member weed board is established, the initial board members serve terms of 1, 2, and 3 years, respectively, as designated by the commissioners. When a five-member weed board is established, two of the initial members serve terms of 1 year, two serve terms of 2 years, and one serves a term of 3 years. After expiration of an initial term of office, the successor serves a 3-year term as provided in subsection (1).

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part); amd. Sec. 15, Ch. 249, L. 1979.

7-22-2105. Organization of county weed board and compensation. (1) The board of weed control shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board.

(2) Salary, per diem, and mileage of such supervisors shall be set by resolution of the board of county commissioners.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part).

7-22-2106. Noxious weeds and seeds declared nuisance. Noxious weeds and the seed of any noxious weed are hereby declared a common nuisance.

History: Ap. p. Sec. 1, Ch. 195, L. 1939; Sec. 16-1702, R.C.M. 1947; Ap. p. Sec. 1, Ch. 195, L. 1939; amd. Sec. 1, Ch. 360, L. 1974; Sec. 16-1701, R.C.M. 1947; R.C.M. 1947, 16-1701(part), 16-1702(part).

7-22-2107. Unlawful to willfully permit noxious weeds to go to seed. (1) It shall be unlawful to willfully permit any noxious weed, as named in this part or designated by the board of county commissioners of the respective county, to go to seed on any lands within the area of any district.

(2) This section shall apply to all persons, partnerships, corporations, or companies owning, occupying, or controlling lands, easements, or rights-of-way, as well as all county, state, and federally owned and controlled highways and state lands and also all drainage and irrigation ditches, spoil banks, borrow pits, and rights-of-way for canals and laterals within the district.

History: En. Sec. 2, Ch. 195, L. 1939; amd. Sec. 1, Ch. 11, L. 1961; R.C.M. 1947, 16-1706.

7-22-2108. Violations. (1) Any person who in any manner interferes with the supervisors or their deputies and employees in carrying out the provisions of this part or who refuses to obey an order of a supervisor is guilty of a misdemeanor, and upon conviction thereof, he shall be fined not to exceed $100.

(2) All fines, bonds, and penalties collected under the provisions of this part shall be paid to the county treasurer of each county and placed by him to the credit of a fund to be known as the noxious weed fund.

History: En. Sec. 18, Ch. 195, L. 1939; R.C.M. 1947, 16-1722; amd. Sec. 16, Ch. 249, L. 1979.

7-22-2109 through 7-22-2120 reserved.

7-22-2121. Weed control program. The supervisors shall control noxious weeds on all lands within the confines of the district. They shall take particular precautions to control the noxious weeds while preserving beneficial vegetation and wildlife habitat. Where at all possible, methods for such control shall include mowing, chemical, and biological methods.

History: En. Sec. 15, Ch. 195, L. 1939; amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6, Ch. 228, L. 1947; amd. Sec. 1, Ch. 68, L. 1973; amd. Sec. 4, Ch. 360, L. 1974; R.C.M. 1947, 16-1719(part).

7-22-2122. Role of county weed board. It shall be the duty of said supervisors to supervise the control program within their county.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part).

7-22-2123. Operation of weed control program. (1) The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation.

(2) (a) Where complaint has been made and the supervisors have reason to believe that noxious weeds described in this part are present upon the lands within the district in violation of the law, they shall forthwith inspect the premises.

(b) If such weeds are found, the supervisors shall cause written notice to be served on the person permitting the same, directing him to comply with the provisions of this part within a period of time specified in said notice.

History: (1)En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; Sec. 16-1713, R.C.M. 1947; (2)En. Sec. 10, Ch. 195, L. 1939; amd. Sec. 2, Ch. 90, L. 1941; Sec. 16-1714, R.C.M. 1947; R.C.M. 1947, 16-1713(part), 16-1714.

7-22-2124. Destruction of weeds by supervisors — report to county clerk. (1) If the notice be not obeyed within the time specified in the notice, the supervisors shall forthwith institute control measures and make report thereof to the county clerk, with a verified, itemized account of their services and expenses in so doing and a description of the lands involved, and shall include in said account the necessary cost and expense of chemicals, man-hours of labor, and equipment employed, at a rate paid, in the immediate vicinity, for labor per day and for equipment used for an 8-hour day.

(2) In effectively controlling such weeds, the supervisors are authorized to take possession and control of any infested tract of land within their district,

together with any fences or ditches thereon, and to move any fence or ditch where necessary in order to better conduct the control work. If any fence or ditch be moved, the same shall be replaced upon completion of the control work if requested by the landowner.

History: **En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part).**

7-22-2125. Procedure for destruction of weeds intermingled with crops. (1) When, in the opinion of the supervisors, noxious weeds are intermixed with a growing crop within the district so that the field is a menace to the district, the supervisors shall have power to order the destruction of the same or such parts thereof as may be necessary.

(2) The supervisors may go upon the land infested with the noxious weeds for any purpose necessary to such enforcement. It shall be the duty of the supervisors to confer with the commissioners as a board of arbitration, who, when they deem it proper, may extend for 1 year the order for destruction of the crop containing the noxious weeds.

History: **En. Sec. 12, Ch. 195, L. 1939; amd. Sec. 4, Ch. 228, L. 1947; R.C.M. 1947, 16-1716.**

7-22-2126. Embargo to prevent introduction of noxious weeds and seeds. Whenever the supervisors have reason to believe that farm products, including seed, which will cause the spread of noxious weeds are about to be introduced into the county, the supervisors shall declare an embargo against the importation of such farm products and seeds into such county.

History: **En. Sec. 3, Ch. 195, L. 1939; R.C.M. 1947, 16-1707.**

7-22-2127. Acquiring and supplying weed control materials. (1) The supervisors shall have authority to purchase such chemicals, material, and equipment as they determine necessary for carrying on an effective control program. Such materials shall be paid for out of the noxious weed fund.

(2) The supervisors shall also determine what chemicals, material, or equipment which they may have on hand shall be made available for distribution to landowners who may wish to control weeds on their own land. The cost for same shall be charged against the landowner and his land and collected for as is provided in this part.

History: **En. Sec. 14, Ch. 195, L. 1939; amd. Sec. 5, Ch. 228, L. 1947; R.C.M. 1947, 16-1718.**

7-22-2128 through 7-22-2140 reserved.

7-22-2141. Noxious weed fund authorized. (1) The board of county commissioners of any county in this state may create a noxious weed control and weed seed extermination fund, to be designated the "noxious weed fund".

(2) This fund shall be kept separate and distinct by the county treasurer.

History: **En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part).**

7-22-2142. Sources of money for noxious weed fund. (1) The board of county commissioners may create the noxious weed fund by either:

(a) appropriating money from the general fund of the county; or

(b) at any time fixed by law for levy and assessment of taxes, levying a tax not exceeding 2 mills on the dollar of total taxable valuation in such county.

(2) The proceeds of the tax shall be used solely for the purpose of promoting the control of noxious weeds or extermination of weed seed in said county and shall be designated to the noxious weed fund.

(3) Any proceeds from work or chemical sales shall revert to the noxious weed fund and shall be available for reuse within the fiscal year.

History: **En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part).**

7-22-2143. Determination of cost of weed control program. The commissioners shall determine and fix the cost of the control of noxious weeds and of extermination of noxious weed seed in weed districts, whether the same be performed by the individual landowners or by the supervisors.

History: **En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part).**

7-22-2144. Payment of cost of weed control program. The total cost of such control shall be paid from the noxious weed fund. The cost of controlling such weeds growing along the right-of-way of a state or federal highway shall, upon the presentation by the supervisors of a verified account of the expenses incurred, be paid from the state highway fund. Costs attributed to other lands within the district shall be assessed to and collected from the appropriate holder or owner of interest as set forth in 7-22-2107.

History: **En. Sec. 15, Ch. 195, L. 1939; amd. Sec. 5, Ch. 90, L. 1941; amd. Sec. 6, Ch. 228, L. 1947; amd. Sec. 1, Ch. 68, L. 1973; amd. Sec. 4, Ch. 360, L. 1974; R.C.M. 1947, 16-1719(part).**

7-22-2145. Expenditures from noxious weed fund. (1) The noxious weed fund shall be expended by the commissioners at such time and in such manner as is deemed best by said supervisors to secure the control and extermination of noxious weeds and weed seed.

(2) Warrants upon such fund shall be drawn by the supervisors. No warrants shall be drawn except upon claims duly itemized by the claimant, except payroll claims which shall be itemized and certified by the supervisors, and each such claim shall be presented to the board of county commissioners for its approval before the warrant therefor shall be countersigned by the commissioners.

History: **En. Sec. 13, Ch. 195, L. 1939; amd. Sec. 4, Ch. 90, L. 1941; amd. Sec. 7, Ch. 228, L. 1947; amd. Sec. 1, Ch. 63, L. 1955; R.C.M. 1947, 16-1717(part).**

7-22-2146. Financial assistance to landowners for weed control. If in the judgment of the commissioners and supervisors it seems advisable, they may agree to assist the landowners in said district with a part of the cost of weed control on their land. If this is to be done, then in cases where the landowner controls the weeds and exterminates the weed seed, he shall present to the supervisors a duly verified claim for one-third of such cost, and when the same has been approved by the supervisors and commissioners, it shall be paid to such landowner out of the noxious weed fund.

History: **En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part).**

7-22-2147. Allocation of costs when control program carried out by supervisors. When the supervisors do the control and extermination provided for in weed districts, one-third of the cost thereof shall be paid out of the noxious weed fund and the remaining two-thirds shall be charged against the land upon which weed control and weed seed extermination was had. Such two-thirds shall be repaid or collected in the manner hereinbefore provided for.

History: En. Sec. 16, Ch. 195, L. 1939; amd. Sec. 6, Ch. 90, L. 1941; amd. Sec. 8, Ch. 228, L. 1947; R.C.M. 1947, 16-1720(part).

7-22-2148. Tax liability for payment of weed control expenses. (1) The expenses referred to in 7-22-2124 shall be paid by the county out of the noxious weed fund, and unless the sum to be repaid by the owner or occupant is repaid before the succeeding October 15, the county clerk shall certify the amount thereof, with the description of the land to be charged, and shall enter the same on the assessment list of the county as a special tax on the land. If the land for any reason is exempt from general taxation, the amount of such charge may be recovered by direct claim against the lessee and collected in the same manner as personal taxes. When such charges are collected, they shall be credited to the noxious weed fund.

(2) In determining what lands are included as land covered by the special tax and are described in the certificate of the county clerk, it is presumed that all work done upon any of the land of any one landowner is for the benefit of all of the land within the district belonging to such owner which was contiguous to or joined the parcel upon which the work was done at the time the work was done, together with the parcel upon which the work was done, and the amount certified becomes a tax upon the whole thereof.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part); amd. Sec. 17, Ch. 249, L. 1979.

7-22-2149. Responsibility for assessments and taxes for weed control levied on leased state lands. The lessee of agricultural state land is responsible for assessments and taxes levied by the board of county commissioners for the district as provided in 77-6-114.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part).

7-22-2150. Cooperation with state and federal-aid programs. The supervisors are empowered to cooperate with any state or federal-aid program that becomes available. Under such a plan of cooperation, the direction of the program shall be under the direct supervision of the supervisors of the county in which the program operates.

History: En. Sec. 17, Ch. 195, L. 1939; amd. Sec. 9, Ch. 228, L. 1947; R.C.M. 1947, 16-1721.

Part 22

Rodent Control Districts

Part Compiler's Comments

1981 Title: The title to Ch. 391, L. 1981 (HB 265), read: "An act to provide for the creation and operation of rodent control districts; repealing sections 7-22-2201 through 7-22-2206, MCA."

Severability: Section 20, Ch. 391, L. 1981, was a severability section.

7-22-2201 through 7-22-2206. Repealed. Sec. 21, Ch. 391, L. 1981.

Compiler's Comments
Histories of Repealed Sections:
7-22-2201. En. Sec. 1, Ch. 122, L. 1949; amd. Sec. 47, Ch. 310, L. 1974; amd. Sec. 2, Ch. 242, L. 1975; R.C.M. 1947, 16-1175(part).
7-22-2202. En. Sec. 1, Ch. 122, L. 1949; amd. Sec. 47, Ch. 310, L. 1974; amd. Sec. 2, Ch. 242, L. 1975; R.C.M. 1947, 16-1175(part).
7-22-2203. En. Sec. 4, Ch. 122, L. 1949; R.C.M. 1947, 16-1178(part).
7-22-2204. En. Sec. 3, Ch. 122, L. 1949; R.C.M. 1947, 16-1177.
7-22-2205. En. Sec. 2, Ch. 122, L. 1949; R.C.M. 1947, 16-1176.
7-22-2206. En. Sec. 4, Ch. 122, L. 1949; R.C.M. 1947, 16-1178(part).

7-22-2207. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the rodent control board for a district.

(2) "Department" means the department of livestock.

(3) "District" means a rodent control district created under the provisions of this part.

(4) "Fund" means the rodent control district fund authorized by 7-22-2221.

(5) "Governing body" means the governing body specified in the alternative form of government adopted by a county.

(6) "Rodent" means Columbia ground squirrel (Citellus columbianus), Richardson ground squirrel (Citellus richardsonii), Aramatus ground squirrel (Citellus aramatus), thirteen-striped ground squirrel (Citellus triecemlineatus), pocket gopher (Thomomys, various species), field mice (Microtus, various species), and prairie dog (Cynomys ludovicianus).

History: En. Sec. 1, Ch. 391, L. 1981.

7-22-2208. Application to state lands. This part applies to lands owned by the state.

History: En. Sec. 2, Ch. 391, L. 1981.

7-22-2209. Application to leased land. Lessees of land within the district are liable for assessments and levies for rodent control and must comply with 7-22-2224 and 7-22-2225 unless the lease specifically forbids rodent control through chemical or other means.

History: En. Sec. 19, Ch. 391, L. 1981.

7-22-2210. Rodent control districts authorized. The governing body of a county may create a district as provided in this part. A district may not contain any city or town.

History: En. Sec. 3, Ch. 391, L. 1981.

7-22-2211. Petition to create district — hearing. (1) The creation of a district may be initiated only by a petition:

(a) signed by at least 51% of the owners of land within the proposed district;

(b) submitted to the governing body of the county; and

(c) accompanied by sufficient funds to defray the cost of giving notice as required by 7-22-2212.

(2) The petition shall set forth the boundaries of the proposed district.

(3) Upon receipt of the petition, the governing body shall set a date for a hearing on the petition. The hearing must be held within 3 weeks of receipt of the petition.

History: **En. Sec. 4, Ch. 391, L. 1981.**

7-22-2212. Notice of hearing. Upon setting a date for the hearing, the governing body shall give notice of the hearing in the following manner:

(1) notice is to be sent by certified mail to each owner of land within the proposed district at the last-known address as shown in the county records;

(2) notice is to be posted in at least three public places within the proposed district; and

(3) notice is to be published in at least two issues of a newspaper of general circulation in the proposed district, with at least 7 days between publication, and the first publication must be at least 10 days before the hearing date.

History: **En. Sec. 5, Ch. 391, L. 1981.**

7-22-2213. Objection to district. (1) At any time up to and including the date of the hearing, a landowner may file written objection to the creation of the district with the county clerk. The county clerk shall note the time of receipt on the written protest and shall compute the percentage of land in the proposed district represented by the protesting landowner.

(2) If the owners of at least 51% of the land in the proposed district file written objections with the county clerk, the district may not be created.

History: **En. Sec. 6, Ch. 391, L. 1981.**

7-22-2214. Hearing — decision. (1) On the date set for the hearing, the governing body shall hear comments on the proposed district. If objections have been filed by owners of at least 51% of the land within the district, the governing body shall deny the petition request and may not create the district. Prior to creating a district, the governing body shall make a finding that creation of the district is in the best interests of the district lands and residents. The decision on whether to grant or deny the petition request shall be made within 10 days of the hearing.

(2) The decision is to be made by an order recorded in the minutes of the governing body. If the district is to be created, the order shall state the name of the district, describe the district boundaries, and provide any other information needed to describe the land included within the district.

(3) A landowner within the proposed district after the initial boundaries have been established may, by petitioning the board of county commissioners, have all or a portion of the lands owned by himself removed from consideration for inclusion within the district. This landowner must, however, agree in writing to control rodents on his land within a 250-yard buffer zone of the district boundary.

History: **En. Sec. 7, Ch. 391, L. 1981.**

7-22-2215. Rodent control board. The county weed board appointed under 7-22-2103 shall serve as the rodent control board.

History: **En. Sec. 8, Ch. 391, L. 1981.**

7-22-2216. Board powers. The board may:

(1) develop and administer a program for the abatement and alleviation of rodent pest conditions within the district;

(2) employ such assistants and employees as are necessary;

(3) purchase or lease such equipment, material, or services as are considered necessary for an effective control program;

(4) sell or lease such equipment, material, or services to district landowners or residents as are considered necessary to implement the rodent abatement program;

(5) cooperate with any corporation, association, group, individual, or state or federal agency in rodent abatement programs;

(6) receive gifts or grants for the implementation of a rodent abatement program; and

(7) enter district lands in order to survey and study conditions and to implement a rodent abatement program.

History: **En. Sec. 9, Ch. 391, L. 1981.**

7-22-2217 through 7-22-2220 reserved.

7-22-2221. Rodent control fund. (1) The governing body shall establish a special fund, to be known as the rodent control district fund, for each district in the county. Money in the fund may be expended only for district administrative costs and the expenses of establishing and implementing a rodent abatement program.

(2) The county treasurer is the administrator of the fund and shall draw warrants on the fund by order of the governing body. Warrants shall be ordered by the governing body when so requested by the board.

History: **En. Sec. 10, Ch. 391, L. 1981.**

7-22-2222. Mill levy authorized. To administer and implement a rodent abatement program, the governing body may levy a tax, not to exceed 2 mills, on the taxable value of the horticultural, farming, grazing, forest, and railroad lands within the district. The proceeds of the levy are to be placed in the district fund.

History: **En. Sec. 11, Ch. 391, L. 1981.**

7-22-2223. Financial operation. (1) Material, equipment, and services purchased or leased by the board are to be paid for by warrants drawn on the fund.

(2) Payment received for material, equipment, and services supplied by the board is to be deposited in the fund. Reimbursement payments as provided for in 7-22-2225 and penalties collected under 7-22-2226 are to be deposited in the fund.

History: **En. Sec. 12, Ch. 391, L. 1981.**

7-22-2224. Implementation of rodent control. (1) Whenever the board has reason to believe a rodent control problem exists, it shall inspect the affected land and may issue an order to the landowner to take the appropriate action. The order to the landowner may only require that affected lands be treated within a 250-yard buffer zone of the adjacent district lands.

(2) If the order is not obeyed in the time specified in the order, the board shall take the necessary steps to control the rodent problem. The expenses of the board in carrying out these measures shall be paid from the fund by the governing body.

History: En. Sec. 13, Ch. 391, L. 1981.

7-22-2225. Reimbursement of fund. (1) Whenever the board has undertaken rodent control pursuant to 7-22-2224, the landowner shall reimburse the fund for the expenses related to rodent control on his land. The board may, by written contract with the landowner, agree to extend the reimbursement over a period not to exceed 5 years.

(2) The agreement may provide for the reimbursement payments to be collected with property taxes, and in this case, the board shall inform the county clerk of the lands to be charged and the amount to be placed on the tax notice. Upon receipt of the payment, the county clerk shall deposit it in the fund.

History: En. Sec. 14, Ch. 391, L. 1981.

7-22-2226. Penalty. (1) Any person who interferes with the board or its employees or agents is subject to a civil penalty not to exceed $100. The board may institute a court action to recover the penalty.

(2) Penalties assessed under this section are to be deposited in the fund.

History: En. Sec. 15, Ch. 391, L. 1981.

7-22-2227 through 7-22-2230 reserved.

7-22-2231. Enlargement of district. A district may be enlarged upon presentation of a petition signed by at least 51% of the owners of the land in the area proposed to be annexed to the district. The provisions of 7-22-2211 through 7-22-2214 apply to the annexation petition, with the term "district" in those sections taken to mean the area proposed to be added.

History: En. Sec. 16, Ch. 391, L. 1981.

7-22-2232. Dissolution of district. (1) Upon receipt of a petition signed by the owners of at least 51% of the land in the district and after a hearing on the petition, a district may be dissolved by order of the governing body. Notice of the hearing is to be given by posting notice in at least three public places in the district and by publishing notice at least once in a newspaper of general circulation in the district. If the governing body finds it to be in the best interest of the district lands and residents to terminate the district, the governing body shall so order.

(2) The dissolution order shall provide for a termination date and for liquidating the district assets and liabilities. Any money remaining in the district fund after all assets and liabilities have been liquidated shall be transferred to the county general fund.

History: En. Sec. 17, Ch. 391, L. 1981.

7-22-2233. Multicounty districts. A multicounty district may be created by interlocal agreement, as provided in Title 7, chapter 11, part 1, between the governing bodies of the counties involved.

History: En. Sec. 18, Ch. 391, L. 1981.

Part 23

County Control of Insect Pests

7-22-2301. Destruction of insect pests authorized. The board of commissioners of any county of this state where there are any insect pests is hereby authorized and empowered to appoint some suitable person or persons whose duty it shall be, acting under the direction of the state department of agriculture, to poison, kill, catch, and exterminate insect pests within such county.

History: En. Sec. 1, Ch. 227, L. 1921; re-en. Sec. 4501, R.C.M. 1921; re-en. Sec. 4501, R.C.M. 1935; amd. Sec. 7, Ch. 433, L. 1975; R.C.M. 1947, 16-1149(part).

7-22-2302. Definition of term insect pest. The term "insect pest" as used in this part shall include grasshopper, cutworm, pale western cutworm, armyworm, chinch bug, and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticultural crops.

History: En. Sec. 5, Ch. 227, L. 1921; re-en. Sec. 4505, R.C.M. 1921; re-en. Sec. 4505, R.C.M. 1935; amd. Sec. 11, Ch. 433, L. 1975; R.C.M. 1947, 16-1153.

7-22-2303. Compensation of appointee. Any person appointed under the provisions of 7-22-2301 shall receive such compensation as the county commissioners agree to pay, with warrants in payment thereof drawn on the general fund.

History: En. Sec. 2, Ch. 227, L. 1921; re-en. Sec. 4502, R.C.M. 1921; amd. Sec. 1, Ch. 25, L. 1923; re-en. Sec. 4502, R.C.M. 1935; amd. Sec. 8, Ch. 433, L. 1975; R.C.M. 1947, 16-1150.

7-22-2304. Authority to enter private land. Any person appointed pursuant to 7-22-2301 to control insect pests may fly over or enter upon any farm, railroad right-of-way, grounds, or premises infested with such insect pests and poison, kill, catch, and exterminate the insect pests therein.

History: En. Sec. 1, Ch. 227, L. 1921; re-en. Sec. 4501, R.C.M. 1921; re-en. Sec. 4501, R.C.M. 1935; amd. Sec. 7, Ch. 433, L. 1975; R.C.M. 1947, 16-1149(part).

7-22-2305. Acquisition of supplies and equipment. The board of county commissioners of any county may from time to time purchase or contract to hire such quantities and amounts of poisons, traps, and other equipment necessary to poison, kill, catch, or exterminate such insect pests, and warrants in payment thereof shall be drawn on the general fund.

History: En. Sec. 3, Ch. 227, L. 1921; re-en. Sec. 4503, R.C.M. 1921; amd. Sec. 2, Ch. 25, L. 1923; re-en. Sec. 4503, R.C.M. 1935; amd. Sec. 9, Ch. 433, L. 1975; R.C.M. 1947, 16-1151.

7-22-2306. Financing of insect pest control program. (1) The governing body of the county shall annually determine the amount of the warrants drawn on the general fund for the purposes of controlling insect pests under a control program approved by the department of agriculture.

(2) In the succeeding year, the governing body shall levy a tax for the purpose of insect pest extermination sufficient to reimburse the general fund for the money paid out on the warrants. The tax shall be levied upon all the property in the county and shall not exceed 3 mills on each dollar of taxable value.

(3) If there is no money in the general fund with which to pay such warrants, they shall be registered and bear interest in the same manner as other

county warrants. In this case, the interest shall be computed and added to the amount for which such tax is levied.

History: En. Sec. 4, Ch. 227, L. 1921; re-en. Sec. 4504, R.C.M. 1921; amd. Sec. 3, Ch. 25, L. 1923; re-en. Sec. 4504, R.C.M. 1935; amd. Sec. 10, Ch. 433, L. 1975; amd. Sec. 8, Ch. 362, L. 1977; amd. Sec. 37, Ch. 566, L. 1977; R.C.M. 1947, 16-1152.

Part 24

Mosquito Control Districts

7-22-2401. Definitions. In this part the following definitions apply:

(1) "Board" means the mosquito control board for any district created under this part.

(2) "Commissioners" means the board of county commissioners of any county.

(3) "District" means any mosquito control district created under the provisions of this part.

(4) "Mosquito" means any insect belonging to the family Culicidae of the order Diptera.

(5) "Mosquito pest" means any group of mosquitoes which annoy man or his domestic animals or transmit any disease of man or of his domestic animals.

History: En. Sec. 1, Ch. 183, L. 1953; amd. Sec. 1, Ch. 337, L. 1973; R.C.M. 1947, 16-4201.

7-22-2402. Mosquito control districts authorized. The board of county commissioners of any county shall have the power to create one or more mosquito control districts within such county in the manner hereinafter provided.

History: En. Sec. 2, Ch. 183, L. 1953; R.C.M. 1947, 16-4202.

7-22-2403. Petition to create mosquito control district — hearing required. (1) When a petition signed by not less than 25% of the qualified electors of the proposed district or 25% of the owners of any property within the boundaries whose names appear as such property owners upon the last-completed assessment roll of the county in which the proposed district is situated is presented to the board of commissioners of the county, asking for the creation of a mosquito control district, the commissioners shall set a day for a hearing on the petition and order notice of the hearing to be given to all persons interested.

(2) The commissioners by resolution shall fix a time for a hearing upon the petition at not less than 2 or more than 4 weeks from the time of presentation thereof unless additional time is needed to prepare a survey and study as authorized by this subsection. Before setting a time for hearing, the commissioners may cause a survey and study of the area sought to be included in such district to be made by competent personnel and may submit a report thereof to the department of health and environmental sciences for its review and recommendations.

History: (1)En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; Sec. 16-4203, R.C.M. 1947; (2)En. Secs. 4, 5, Ch. 183, L. 1953; amd. Secs. 3, 4, Ch. 337, L. 1973; amd. Secs. 2, 3, Ch. 399, L. 1975; Secs. 16-4204, 16-4205, R.C.M. 1947; R.C.M. 1947, 16-4203(1), 16-4204(1), 16-4205(part); amd. Sec. 18, Ch. 249, L. 1979.

7-22-2404. Details relating to petition to create district. (1) The petition provided for in 7-22-2403 shall set forth the boundaries of the proposed district and request that the property within the boundaries be organized into a mosquito control district.

(2) Sufficient funds to defray the cost of mailing, publication, and posting of notice shall accompany the petition.

History: En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; R.C.M. 1947, 16-4203(part).

7-22-2405. Inclusion of cities and towns within district. Such proposed district may include any incorporated or unincorporated city or town of the county.

History: En. Sec. 3, Ch. 183, L. 1953; amd. Sec. 1, Ch. 226, L. 1955; amd. Sec. 2, Ch. 337, L. 1973; amd. Sec. 1, Ch. 399, L. 1975; R.C.M. 1947, 16-4203(part).

7-22-2406. Notice of hearing on petition to create district. (1) If addresses are known, the commissioners shall cause notice of the hearing provided for in 7-22-2403 to be mailed to each nonresident owner of taxable real and personal property within the proposed district.

(2) The commissioners shall cause notice to be posted in three public places within the district. Whenever the district is partly in one county and partly in another county, notice must be posted in each county but posting need not be in three places in each county.

(3) The commissioners shall also cause notice to be given of the time and place of the hearing and the methods of objection by publication in a newspaper within or nearest to the district and, if the district is partly in one county and partly in another county, in a newspaper in each county, if such newspaper exists. The publication must be for two weekly issues.

(4) Posting and first publication shall be at least 10 days before the hearing.

History: En. Sec. 4, Ch. 183, L. 1953; amd. Sec. 3, Ch. 337, L. 1973; amd. Sec. 2, Ch. 399, L. 1975; R.C.M. 1947, 16-4204(part); amd. Sec. 19, Ch. 249, L. 1979.

7-22-2407. Notice to include information relating to protest. The notice shall state that any qualified elector or owner of property lying within the boundaries of the proposed district may appear before the board at the time of hearing and show cause why the district should not be created or may file his written objection to creation of the district at any time before the date of said hearing.

History: En. Sec. 4, Ch. 183, L. 1953; amd. Sec. 3, Ch. 337, L. 1973; amd. Sec. 2, Ch. 399, L. 1975; R.C.M. 1947, 16-4204(part).

7-22-2408. Hearing on petition to create district. (1) At the time fixed for said hearing, the commissioners shall determine whether or not the petition complies with the requirements hereinbefore set forth and whether or not the notice has been published and posted as required.

(2) At such hearing, the board must hear all competent and relevant testimony offered in support of or in opposition to said petition and creation of said district and shall also consider the written objections to the creation of the district.

(3) Except as provided in 7-22-2409, if the commissioners, upon such hearing, determine there has been compliance with all of the requirements

herein set forth, they shall, by an order duly made and entered on their minutes, declare the district created, setting forth the name and boundaries of the district and the description of land contained therein.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part).

7-22-2409. Adjournment of hearing. (1) Said hearing may be adjourned from time to time for determination of facts, but no adjournment shall exceed 2 weeks in all from and after the date originally noticed and published for the hearing.

(2) (a) Where at the time of the hearing the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of health and environmental sciences to determine if it would be advisable to exclude the geographical area from the district.

(b) Upon reconvening, the commissioners shall define and establish such boundaries as are advisable.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part).

7-22-2410. Protest to creation of district. (1) At the hearing provided for in 7-22-2403 or at any time following the first publication of notice of such hearing until the time of said hearing, any qualified elector or an owner of property within the proposed district may file his written objections to the creation of the district. Such objections shall be delivered to the county clerk, who shall endorse thereon the date of its receipt by him.

(2) If 51% or more of the qualified electors or of the owners of property within the boundaries of the proposed district file their written objections to the creation of such district, the commissioners shall not proceed with the creation of such district.

(3) If as the result of objections filed the commissioners in their discretion determine the question in doubt whether or not the creation of a district is to the best interest of an area and the residents therein, the commissioners may cause the issue to be determined by referendum at the next regular election.

History: En. Sec. 5, Ch. 183, L. 1953; amd. Sec. 4, Ch. 337, L. 1973; amd. Sec. 3, Ch. 399, L. 1975; R.C.M. 1947, 16-4205(part).

7-22-2411. District to be governed by appointed mosquito control board. (1) Upon the creation of any mosquito control district, the commissioners shall appoint a mosquito control board composed of not less than three or more than five members.

(2) Each member of the mosquito control board shall be an elector within the boundaries of the district.

(3) The board is a body corporate and shall act as such, and the members are public officers.

(4) The health officer having jurisdiction in the proposed district, the sanitarian or a member of his staff, and the county extension agent, if the county has any or all such officers, are ex officio members of the board without vote.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part); amd. Sec. 20, Ch. 249, L. 1979.

7-22-2412. Term of office. (1) The terms of office for the first appointed members shall be so arranged that they do not all expire at the same time and for that purpose may be set for any length of time not more than 3 years.

(2) Thereafter the terms of all members shall be 3 years, the term of one member expiring on January 1 in each year.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

7-22-2413. Compensation. All such board members shall serve without pay. The appointed members shall receive per diem as allowed by state law for each day when the board is actually in session and their necessary mileage as provided by law.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

7-22-2414. Organization of mosquito control board. The members of the mosquito control board shall organize each year by choosing a chairman, who shall be from among the appointed members, and a secretary.

History: En. Sec. 7, Ch. 183, L. 1953; amd. Sec. 6, Ch. 337, L. 1973; amd. Sec. 5, Ch. 399, L. 1975; R.C.M. 1947, 16-4207(part).

7-22-2415. Powers of mosquito control board. The mosquito control board shall have power to:

(1) develop and administer a program for the abatement and alleviation of mosquito pest conditions within the district;

(2) employ such suitable and competent assistants and employees as may be necessary and provide for their compensation;

(3) purchase, rent, or execute leasing agreements for such equipment and material as they may determine to be necessary for carrying on an effective control program;

(4) cooperate with any corporation, association, individual, or group of individuals, including any agency of the federal or state governments, in a mosquito abatement program;

(5) receive gifts, grants, or donations for the purpose of advancing its program;

(6) take such action as may be necessary or advisable to survey, control, modify, or abate any condition which may or does contribute to the existence of the mosquito pest and for this purpose enter upon any premises located within the said district, through its members, employees, or agents.

History: En. Sec. 8, Ch. 183, L. 1953; R.C.M. 1947, 16-4208.

7-22-2416. Implementation of mosquito control program. (1) Whenever there exists within the district any condition which unnecessarily contributes to the production of mosquitoes and in the judgment of the board it is reasonably feasible for the owner of the land on which such condition exists to remove, correct, or prevent the same, the board shall have the power to notify such landowner in writing to remove, correct, or destroy such condition within a reasonable time, to be specified in such notice, and to prevent the recurrence thereof.

(2) The board shall provide for a hearing whenever there is a condition upon the land in need of attention as provided for and in keeping with the

provisions of this part. The board shall determine from the evidence presented at the hearing whether the above-mentioned condition does exist and shall order compliance in keeping with the provisions of this part. The landowner shall have the right of appeal, which appeal shall be conducted in the same manner as appeals in civil action.

History: En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(a).

7-22-2417. Unlawful to interfere with mosquito control personnel. Any person who in any manner willfully interferes with the mosquito control board or its officers, agents, or employees in carrying out the provisions of this part shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed the sum of $100. If the court should so determine, such person shall also be subject to the requirement of giving a bond to keep the peace to prevent further interference with the work of said officials or their agents and employees.

History: En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(b).

7-22-2418. Relationship of mosquito control districts and boards with department of health and environmental sciences and department of agriculture. (1) It shall be the duty of the department of health and environmental sciences to advise the commissioners of any county relative to the creation of mosquito control districts within such county and upon request to advise the boards of such districts in connection with their control programs.

(2) Annually on or before February 1, the board of each district shall submit to the department of health and environmental sciences and the department of agriculture, for their review and advice, a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year.

History: En. Sec. 9, Ch. 183, L. 1953; amd. Sec. 1, Ch. 2, L. 1969; amd. Sec. 7, Ch. 337, L. 1973; R.C.M. 1947, 16-4209.

7-22-2419. Establishment and operation of joint mosquito control districts. (1) Joint mosquito control districts (that is, districts which lie partly in one county and partly in another) may be created or dissolved in the same manner as provided in this part for other districts, except that in such cases all petitions must be directed to the commissioners of each county affected and must be acted upon by them concurrently.

(2) In the case of such districts, the mosquito control board shall be constituted in the same manner and shall have the same powers as are provided for other boards in this part, except that appointments shall be made by joint action of the commissioners in all counties affected and each county shall be represented among the appointed members of the board. The county health officer, county sanitarian, and county extension agent of each county shall be ex officio members of the board without vote.

History: En. Sec. 13, Ch. 183, L. 1953; R.C.M. 1947, 16-4213(part).

7-22-2420. Scope of part. Insofar as the provisions of this part are inconsistent with the provisions of any other law, the provisions of this part shall be controlling.

History: En. Sec. 14, Ch. 183, L. 1953; R.C.M. 1947, 16-4214.

7-22-2421 through 7-22-2430 reserved.

7-22-2431. Mosquito control fund. (1) The board of county commissioners of any county within which a mosquito control board has been created shall establish a mosquito control fund.

(2) Warrants upon such fund shall be drawn by the board of county commissioners upon the presentation of claims approved by the mosquito control board.

History: **En. Sec. 10, Ch. 183, L. 1953; amd. Sec. 1, Ch. 22, L. 1969; R.C.M. 1947, 16-4210(part).**

7-22-2432. Levy of district taxes — limit on mill levy. (1) At the time fixed by law for levy and assessment of taxes, the board of county commissioners of any county within which a mosquito control board has been created shall levy a tax not exceeding 5 mills on the dollar of the total taxable valuation in such district on all property situated within the said district.

(2) The proceeds of the tax shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which such mosquito control district was created.

History: **En. Sec. 10, Ch. 183, L. 1953; amd. Sec. 1, Ch. 22, L. 1969; R.C.M. 1947, 16-4210(part).**

7-22-2433. Tax levy for joint mosquito control districts. The annual tax levy for joint mosquito control districts, if any, shall be made by agreement of the commissioners of all counties affected and shall apply uniformly throughout such joint districts.

History: **En. Sec. 13, Ch. 183, L. 1953; R.C.M. 1947, 16-4213(part).**

7-22-2434. Disposition of fines, bonds, and penalties. All fines, forfeited bonds, and penalties collected under the provisions of this part shall be paid to the county treasurer of each county and placed by him to the credit of the mosquito control fund.

History: **En. Sec. 12, Ch. 183, L. 1953; R.C.M. 1947, 16-4212(c).**

7-22-2435 through 7-22-2440 reserved.

7-22-2441. Annexation of land to mosquito control district. Any such district at any time subsequent to its creation may be enlarged to include adjacent land upon the presentation to the board of county commissioners of a petition signed by not less than 25% of the electors within the adjacent land or 25% of the owners of any property lying within the boundaries of the area proposed to be annexed to the district whose names appear as such property owners upon the last-completed assessment role of the county in which the said proposed area is situated.

History: **En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).**

7-22-2442. Hearing on petition for annexation — notice. If any such petition for enlargement of an existing district is presented, the board of county commissioners shall set a time for hearing thereon and shall cause notice thereof to be given in the manner provided by 7-22-2406 and 7-22-2407.

History: **En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).**

7-22-2443. Decision on petition for annexation. (1) Except as provided in subsection (2), if, upon the hearing provided for in 7-22-2242, the commissioners believe it to be to the best interests of the area and those resident therein that such area be annexed to the district, they shall, by an order duly made and entered on their minutes, declare the area in question to be annexed to the district, and such annexed area shall thenceforth be considered a part of such district for all purposes as originally included therein.

(2) (a) If 51% or more of the qualified electors or of the property owners in the area proposed to be annexed to the district file their objections to the creation of such district, the commissioners shall not act on such petition.

(b) If as a result of objections filed the commissioners in their discretion determine the question in doubt whether or not the annexation of the area is to the best interest of the area and of the residents therein, the commissioners may cause the issue to be decided by referendum at the next regular election.

History: **En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).**

7-22-2444. Effect of annexation. If such additional area is added, such territory shall be subject to the tax authorized by this part together with the preexisting area of the district. Such tax shall be uniform for the area added and the territory in the district as enlarged.

History: **En. Sec. 6, Ch. 183, L. 1953; amd. Sec. 5, Ch. 337, L. 1973; amd. Sec. 4, Ch. 399, L. 1975; R.C.M. 1947, 16-4206(part).**

7-22-2445. Dissolution of mosquito control district. A mosquito control district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least 51% of the qualified electors or of the property owners within the district.

History: **En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).**

7-22-2446. Hearing on petition for dissolution — notice. Upon the filing of a petition for dissolution, the board of county commissioners shall set a time for hearing the petition and shall cause notice thereof to be mailed to all nonresident property owners within the district whose addresses are known, to be posted in at least three public places within the district, and to be published at least once in the official newspaper of the county published in the district, the posting and publication to be at least 10 days before the date of hearing. Whenever the district is partly in one county and partly in another county, notice must be posted in each county, but posting need not be in three places in each county, and notice must be published in the official newspaper of each county.

History: **En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part); amd. Sec. 21, Ch. 249, L. 1979.**

7-22-2447. Decision on petition for dissolution. The commissioners shall enter upon their minutes an order dissolving such district if, upon the hearing provided for in 7-22-2446, the commissioners find:

(1) such petition to be sufficient;

(2) that the district is not indebted in any amount beyond the funds immediately available to extinguish all of its debts and obligations; and

(3) that there is good reason for the dissolution of such district.

History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).

7-22-2448. Effect of dissolution. (1) The effective date of such dissolution shall be set by the commissioners at such time within the fiscal year as best conforms with the operations of the county budget, provided that before the dissolution shall be effective for all purposes, the mosquito control board of the district shall certify to the commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with legal proof thereof.

(2) (a) Any funds unexpended at the dissolution of a district shall be paid over into the county general fund. Where the district is partly in one county and partly in another county, the funds shall be apportioned between the counties and such apportionment shall be based on the taxable value of the property which is within the district.

(b) Physical assets may be liquidated as provided for in 7-8-2211 through 7-8-2220. Where the district is partly in one county and partly in another county, the proceeds of the sale of physical assets will be apportioned in like manner as the liquid assets.

History: En. Sec. 11, Ch. 183, L. 1953; amd. Sec. 8, Ch. 337, L. 1973; amd. Sec. 6, Ch. 399, L. 1975; R.C.M. 1947, 16-4211(part).

Parts 25 through 40 reserved

Part 41

Municipal Weed Control

7-22-4101. Control of noxious weeds within municipality. The city or town council has power to:

(1) declare and determine what vegetation within the city or town shall be noxious weeds;

(2) provide the manner in which they shall be exterminated;

(3) require the owner or owners of any property within said city or town to exterminate or remove noxious weeds from their premises and the one-half of any road or street lying next to the land or boulevard abutting thereon; and

(4) provide, in the event the owner or owners of any of said premises neglect to exterminate or remove the noxious weeds therefrom, for levying the cost of such extermination or removal as a special tax against the property.

History: En. Subd. 83, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.82, R.C.M. 1935; R.C.M. 1947, 11-985.

CHAPTER 23

DOMESTIC ANIMAL CONTROL AND PROTECTION

Part 1 — Local Government Control of Dogs

Section
7-23-101. Dog collar and license tag required.
7-23-102. Seizure and impounding of dogs running at large without tag.

7-23-103. Local government cooperation in the operation of pounds.
7-23-104. Violations.
7-23-105. Disposition of fines.

Parts 2 through 20 reserved

Part 21 — County Control of Dogs

7-23-2101 through 7-23-2107. Repealed. Sec. 3, Ch. 208, L. 1979.
7-23-2108. County control of dogs.
7-23-2109. Vicious dog control.
Section 7-23-2110 reserved.
7-23-2111 through 7-23-2117. Repealed. Sec. 3, Ch. 208, L. 1979.

Parts 22 through 40 reserved

Part 41 — Municipal Control and Protection of Domestic Animals

7-23-4101. Control of animals running at large.
7-23-4102. Licensing of dogs.
7-23-4103. Relation of municipal dog license tags to other laws.
7-23-4104. Cruelty to animals.

Part 1

Local Government Control of Dogs

7-23-101. Dog collar and license tag required. It shall be unlawful, where this part, part 21, and 7-23-4103 apply, for any person to own, harbor, or keep any dog over the age of 5 months or to permit such a dog owned, harbored, or controlled by him to run at large unless the dog has attached to its neck a substantial collar on which is fastened a license tag issued by the authority of a county or a municipal corporation for the purpose of identifying the dog and designating the owner; provided, however, that it shall be lawful to remove such collar and license tag when such dog is under the immediate control of its owner or his agent.

History: En. Sec. 1, Ch. 280, L. 1959; R.C.M. 1947, 16-4601.

7-23-102. Seizure and impounding of dogs running at large without tag. Any dog found running at large without a valid current dog license tag issued by the authority of a county or municipal corporation pursuant to the provisions of this part, part 21, and 7-23-4103 may be seized and impounded by any sheriff, deputy sheriff, policeman, game warden, county poundmaster, or other law enforcement officer.

History: En. Sec. 5, Ch. 280, L. 1959; R.C.M. 1947, 16-4605.

7-23-103. Local government cooperation in the operation of pounds. The board of county commissioners may enter into contracts with municipal corporations for the use by the county or by the municipal corporation of the impounding facilities of the other.

History: **En. Sec. 7, Ch. 280, L. 1959; R.C.M. 1947, 16-4607(part).**

7-23-104. Violations. Violation of any provision of this part or part 21 shall constitute a misdemeanor.

History: **En. Sec. 13, Ch. 280, L. 1959; R.C.M. 1947, 16-4613.**

7-23-105. Disposition of fines. All fines collected under the provisions of this part and part 21 shall be paid into the county treasury and shall be used to pay fees, salaries, costs, or expenses for the enforcement of this part and part 21.

History: **En. Sec. 12, Ch. 280, L. 1959; R.C.M. 1947, 16-4612(part).**

Parts 2 through 20 reserved

Part 21

County Control of Dogs

7-23-2101 through 7-23-2107. Repealed. Sec. 3, Ch. 208, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-23-2101. En. Sec. 2, Ch. 280, L. 1959; R.C.M. 1947, 16-4602(part).

7-23-2102. En. Sec. 2, Ch. 280, L. 1959; R.C.M. 1947, 16-4602(part).

7-23-2103. En. Sec. 2, Ch. 280, L. 1959; R.C.M. 1947, 16-4602(part).

7-23-2104. En. Sec. 3, Ch. 280, L. 1959; R.C.M. 1947, 16-4603(part).

7-23-2105. En. Sec. 3, Ch. 280, L. 1959; R.C.M. 1947, 16-4603(part).

7-23-2106. En. Sec. 3, Ch. 280, L. 1959; R.C.M. 1947, 16-4603(part).

7-23-2107. En. Sec. 12, Ch. 280, L. 1959; R.C.M. 1947, 16-4612(part).

7-23-2108. County control of dogs. (1) The governing body of the county has power to regulate, restrain, or prohibit the running at large of dogs by the adoption of an ordinance which substantially complies with the provisions of 7-5-103 through 7-5-107 and which may provide for the wearing of a license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps, or harbors the dog.

(2) The county governing body is authorized to impound, sell, kill, or otherwise destroy dogs found at large contrary to ordinances.

(3) Nothing in this section restricts the governing body from enacting dog control measures in a portion of the county only.

History: **En. Sec. 1, Ch. 208, L. 1979.**

7-23-2109. Vicious dog control. (1) The county governing body may regulate, restrain, control, kill, or quarantine any vicious dog, whether such dog is licensed or unlicensed, by the adoption of an ordinance which substantially complies with the provisions of 7-5-103 through 7-5-107.

(2) A violation of any ordinance established as provided in subsection (1) is a misdemeanor.

(3) For purposes of this section, a "vicious dog" is defined as one which bites or attempts to bite any human being without provocation or which

harasses, chases, bites, or attempts to bite any other animal. The term "animal" includes all livestock and any domestic pet.

History: **En. Sec. 2, Ch. 208, L. 1979.**

7-23-2110 reserved.

7-23-2111 through 7-23-2117. Repealed. Sec. 3, Ch. 208, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

7-23-2111. En. Sec. 6, Ch. 280, L. 1959; R.C.M. 1947, 15-4606.

7-23-2112. En. Sec. 7, Ch. 280, L. 1959; R.C.M. 1947, 16-4607(part).

7-23-2113. En. Sec. 7, Ch. 280. L. 1959; R.C.M. 1947, 16-4607(part).

7-23-2114. En. Sec. 7, Ch. 280, L. 1959; R.C.M. 1947, 16-4607(part).

7-23-2115. En. Sec. 8, Ch. 280, L. 1959; R.C.M. 1947, 16-4608.

7-23-2116. En. Secs. 9, 10, Ch. 280, L. 1959; R.C.M. 1947, 16-4609, 16-4610.

7-23-2117. En. Sec. 11, Ch. 280, L. 1959; R.C.M. 1947, 16-4611.

Parts 22 through 40 reserved

Part 41

Municipal Control and Protection of Domestic Animals

7-23-4101. Control of animals running at large. The city or town council has power to regulate, restrain, or prohibit the running at large of horses, cattle, swine, sheep, goats, and dogs or other animals and to authorize the impounding and sale thereof if found at large contrary to ordinances.

History: **En. Subd. 36, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.35, R.C.M. 1935; R.C.M. 1947, 11-938.**

7-23-4102. Licensing of dogs. The city or town council has power to license the keeping of dogs and to provide for the killing or destruction thereof if found running at large without license.

History: **En. Subd. 37, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.36, R.C.M. 1935; R.C.M. 1947, 11-939.**

7-23-4103. Relation of municipal dog license tags to other laws. Any dog license tag issued annually by any municipal corporation pursuant to an ordinance which substantially complies with parts 1 and 21 and which provides for the wearing of the license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps, or harbors the dog constitutes compliance with the licensing provisions of parts 1 and 21.

History: **En. Sec. 4, Ch. 280, L. 1959; R.C.M. 1947, 16-4604.**

7-23-4104. Cruelty to animals. The city or town council has power to prohibit and punish cruelty to animals.

History: **En. Subd. 32, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.31, R.C.M. 1935; R.C.M. 1947, 11-934.**

CHAPTERS 24 THROUGH 30

RESERVED

CHAPTER 31

GENERAL EMERGENCY AND PROTECTIVE SERVICES

Part 1 — Smoke Abatement

Section
7-31-101. Authorization for smoke abatement program.
7-31-102. Petition for smoke abatement program.
7-31-103. Contract for smoke abatement.
7-31-104. Contractor's bond.
7-31-105. Modification of contract.
7-31-106. Authorization for county to issue bonds — election required.
7-31-107. Authorization for municipality to issue bonds — election required.
7-31-108. Notice of election.
7-31-109. Conduct of election.
7-31-110. Effect of election.
7-31-111. Cost of election in case of voter disapproval.
7-31-112. Details relating to bonds.
7-31-113. Disposition of bonds.
7-31-114. Disposition of sale proceeds — sanitary coupon bond fund.
7-31-115. Disbursement of money.
7-31-116. Payment of bonds and other obligations.

Parts 2 through 20 reserved

Part 21 — General Provisions Affecting Counties

7-31-2101. Authorization to transfer funds for emergency relief.

Parts 22 through 40 reserved

Part 41 — General Provisions Affecting Municipalities

7-31-4101. Board of health.
7-31-4102. Sales of poisons and opium.
7-31-4103. Ditches, drains, and flumes in municipalities.
7-31-4104. Suppression of fraud and immoral publications.

Part 42 — Open Ditches

7-31-4201. Findings and purpose.
7-31-4202. Interpretation of part.
7-31-4203. Open ditch declared nuisance.
7-31-4204. Investigation and remedial measures related to open ditches.
7-31-4205. Procedure to close and fill ditch — notice.
7-31-4206. Procedure to maintain open ditch.
7-31-4207. Exemption for commercial irrigation ditches — improvement districts for protection from open ditches.

Part 1

Smoke Abatement

7-31-101. Authorization for smoke abatement program. It shall be lawful for any county or incorporated city or town in any county in this state where injurious and unhealthy smoke and fumes exist to make contracts for the abatement thereof and to issue and dispose of bonds for that purpose, subject to the limitations and conditions provided in this part.

History: En. Sec. 1, p. 142, L. 1893; re-en. Sec. 4831, Pol. C. 1895; re-en. Sec. 3430, Rev. C. 1907; re-en. Sec. 5289, R.C.M. 1921; re-en. Sec. 5289, R.C.M. 1935; R.C.M. 1947, 11-2501.

7-31-102. Petition for smoke abatement program. Wherever a petition is presented to the board of county commissioners of any county or to the council of any incorporated city or town, signed by at least 100 of the resident taxpayers of such county or incorporated city or town, requesting that a contract be made and vote taken under this part, it shall be the duty of the board of county commissioners of such county or the council of such incorporated city or town, as the case may be, to enter into and make a contract for the abatement of such injurious and unhealthy smoke or fumes or for conducting or carrying the same away, so as to remove or lessen the injurious and unhealthy results thereof as effectually as the same can be done.

History: En. Sec. 2, p. 142, L. 1893; re-en. Sec. 4832, Pol. C. 1895; re-en. Sec. 3431, Rev. C. 1907; re-en. Sec. 5290, R.C.M. 1921; re-en. Sec. 5290, R.C.M. 1935; R.C.M. 1947, 11-2502(part).

7-31-103. Contract for smoke abatement. (1) The smoke abatement contract shall:

(a) be entered into and made with such person or persons or corporation or corporations and contain such provisions and conditions as will, in the opinion of the board of county commissioners or the council of said incorporated town or city, as the case may be, best accomplish the purpose aforesaid; and

(b) take effect and be in force as provided in this part.

(2) Whenever a contract shall have been entered into as aforesaid, it shall be reduced to writing and executed by the parties in due form of law and three copies thereof deposited with the clerk of the board of county commissioners or clerk of the council, as the case may be, for public inspection and examination.

History: (1)En. Sec. 2, p. 142, L. 1893; re-en. Sec. 4832, Pol. C. 1895; re-en. Sec. 3431, Rev. C. 1907; re-en. Sec. 5290, R.C.M. 1921; re-en. Sec. 5290, R.C.M. 1935; Sec. 11-2502, R.C.M. 1947; (2)En. Sec. 3, p. 143, L. 1893; re-en. Sec. 4833, Pol. C. 1895; re-en. Sec. 3432, Rev. C. 1907; re-en. Sec. 5291, R.C.M. 1921; re-en. Sec. 5291, R.C.M. 1935; Sec. 11-5203, R.C.M. 1947; R.C.M. 1947, 11-2502(part), 11-2503(part).

7-31-104. Contractor's bond. The person or persons or corporation or corporations with whom said contract shall have been made shall execute their or its bond or bonds, with sufficient sureties, to such board of county commissioners or city or town, conditioned for the full and faithful performance of all the terms and conditions on their part. The terms, conditions, and penalty of the surety bond shall be approved by the contracting board or council. The surety bond or bonds shall be in full force and effect upon the ratification of the contract as provided in this part, the condition of which shall be expressed in the contract.

History: En. Sec. 3, p. 143, L. 1893; re-en. Sec. 4833, Pol. C. 1895; re-en. Sec. 3432, Rev. C. 1907; re-en. Sec. 5291, R.C.M. 1921; re-en. Sec. 5219, R.C.M. 1935; R.C.M. 1947, 11-2503(part).

7-31-105. Modification of contract. In the event it shall be found expedient and proper in executing said contract to modify or change the same in some of the minute details thereof and such modifications or changes shall be agreed upon by the parties thereto, the same may be made with the approval of the judge or judges of the district forming such county or the judge or judges of the district in which such county or incorporated city or town is included and, when so approved, shall have the same force and effect as if originally contained therein.

History: En. Sec. 10, p. 146, L. 1893; re-en. Sec. 4840, Pol. C. 1895; re-en. Sec. 3439, Rev. C. 1907; re-en. Sec. 5298, R.C.M. 1921; re-en. Sec. 5298, R.C.M. 1935; R.C.M. 1947, 11-2510.

7-31-106. Authorization for county to issue bonds — election required. (1) If the petition is presented to the board of county commissioners, it shall be the duty of the board, for the purpose of raising money to meet the payments under the terms and conditions of said contract and other necessary and proper expenses in and about the same and for the approval or disapproval thereof:

(a) to ascertain, within 30 days after submission of the petition, the existing indebtedness of the county in the aggregate; and

(b) to submit, within 60 days after ascertaining the same, to the electors of such county the proposition to approve or disapprove the contract and the issuance of bonds necessary to carry out the same.

(2) The amount of the bonds authorized by this section may not exceed 22.5% of the taxable value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained by the last assessment for state and county taxes previous to the issuance of said bonds and incurring of said indebtedness.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part); amd. Sec. 56, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "may not exceed 22.5% of the taxable value" for "shall not exceed 5% of the value" near the beginning of (2).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval."

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-31-107. Authorization for municipality to issue bonds — election required. (1) If said petition is presented to the council of any incorporated city or town, the council, for the purpose of raising money to meet the payments under the terms and conditions of said contract and other necessary and proper expenses in and about the same and for the approval or disapproval thereof:

(a) shall ascertain, within 30 days after submission of the petition, the aggregate indebtedness of such city or town; and

(b) shall submit, within 60 days after ascertaining the same, to the electors of such city or town the proposition to approve or disapprove said contract and the issuance of bonds necessary to carry out the same.

(2) The amount of the bonds authorized by this section may not exceed 16.5% of the taxable value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained in the manner provided in this part.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part); amd. Sec. 57, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "may not exceed 16.5% of the taxable value" for "shall not exceed 3% of the value" near the beginning of (2).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: "(1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval."

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-31-108. Notice of election. (1) The board of county commissioners of the county in which such election is to be held or the council of the incorporated city or town, as the case may be, shall give notice of such election, stating:

(a) the objects thereof;

(b) the time and place of holding the same;

(c) such conditions of the contract as in their judgment are proper and necessary to enable the electors to vote intelligently upon the proposition submitted to them;

(d) the amount of bonds proposed to be issued, when payable, and the interest they are to bear; and

(e) a description of the tickets or ballots to be used.

(2) The notice shall be given at least three times a week for at least 6 consecutive weeks next preceding such election in some newspaper printed and published and circulated in the county, city, or town, as the case may be, in which such election shall be held and if no newspaper be printed, published, and circulated therein, then in some newspaper printed and published in some county nearest thereto.

History: En. Sec. 6, p. 144, L. 1893; re-en. Sec. 4836, Pol. C. 1895; re-en. Sec. 3435, Rev. C. 1907; re-en. Sec. 5294, R.C.M. 1921; re-en. Sec. 5294, R.C.M. 1935; R.C.M. 1947, 11-2506.

7-31-109. Conduct of election. (1) The vote upon such proposition shall be had at an election for that purpose to be held, conducted, and counted and with results ascertained and determined in the manner and by the same officers provided by law for general elections, except as otherwise provided herein.

(2) The proposition to be submitted shall be upon printed tickets or ballots, upon each of which shall be printed the following: "For the contract and bonds" and "Against the contract and bonds", the former above the latter. The elector shall indicate his vote by a cross opposite the one or the other for which he votes.

(3) No registration under the election laws of this state shall be required for the purposes of the election herein provided for, and the registration had at the last election preceding the same shall govern and control as if especially had and done for the purpose of the election to be held under this part.

History: (1), (2)En. Sec. 5, p. 144, L. 1893; re-en. Sec. 4835, Pol. C. 1895; re-en. Sec. 3434, Rev. C. 1907; re-en. Sec. 5293, R.C.M. 1921; re-en. Sec. 5293, R.C.M. 1935; Sec. 11-2505, R.C.M. 1947; (3)En. Sec. 11, p. 146, L. 1893; re-en. Sec. 4841, Pol. C. 1895; re-en. Sec. 3440, Rev. C. 1907; re-en. Sec. 5299, R.C.M. 1921; re-en. Sec. 5299, R.C.M. 1935; Sec. 11-2511, R.C.M. 1947; R.C.M. 1947, 11-2505(part), 11-2511.

7-31-110. Effect of election. (1) If a majority of the votes cast were for the contract and bonds, then the contract is in full force and effect and the bonds shall be issued and disposed of in the manner provided in this part.

(2) If there was a tie vote or a majority of the votes were cast against the contract and bonds, then the contract and surety bond given for its fulfillment are void and the bonds shall not be issued.

History: En. Sec. 5, p. 144, L. 1893; re-en. Sec. 4835, Pol. C. 1895; re-en. Sec. 3434, Rev. C. 1907; re-en. Sec. 5293, R.C.M. 1921; re-en. Sec. 5293, R.C.M. 1935; R.C.M. 1947, 11-2505(part); amd. Sec. 1, Ch. 263, L. 1979.

7-31-111. Cost of election in case of voter disapproval. If the proposition submitted to the voters pursuant to 7-31-106 or 7-31-107 is disapproved, the expenses of such election shall be paid out of the general fund of such county, city, or town, as the case may be.

History: En. Sec. 4, p. 143, L. 1893; re-en. Sec. 4834, Pol. C. 1895; re-en. Sec. 3433, Rev. C. 1907; re-en. Sec. 5292, R.C.M. 1921; re-en. Sec. 5292, R.C.M. 1935; R.C.M. 1947, 11-2504(part).

7-31-112. *(Temporary)* **Details relating to bonds.** (1) The bonds to be issued upon the conditions and under the provisions aforesaid shall:

(a) bear the date of their issuance;

(b) be designated as sanitary coupon bonds of the county, city, or town issuing the same;

(c) be of a denomination not less than $500 or more than $1,000 each;

(d) be payable at such place in New York City or elsewhere, at the discretion of the board or council issuing the same;

(e) bear interest at a rate not exceeding the limitations of 17-5-102, payable 30 years after the date thereof, with the privilege of paying the same at any time after 5 years from such date, which interest shall be payable semiannually at the place whereat the principal is payable and for which interest coupons shall be attached to said bonds.

(2) If said bonds and coupons are issued by any county, they shall be signed by the chairman of the board of county commissioners of such county and attested by the clerk thereof and his seal attached thereto. If the bonds and coupons are issued by any incorporated city or town, the same shall be signed by the mayor and attested to by the city or town clerk and the seal thereof attached.

7-31-112. *(Revived July 1, 1983)* **Details relating to bonds.** (1) The bonds to be issued upon the conditions and under the provisions aforesaid shall:

(a) bear the date of their issuance;

(b) be designated as sanitary coupon bonds of the county, city, or town issuing the same;

(c) be of a denomination not less than $500 or more than $1,000 each;

(d) be payable at such place in New York City or elsewhere, at the discretion of the board or council issuing the same;

(e) bear interest at the rate of 6% per annum, payable 30 years after the date thereof, with the privilege of paying the same at any time after 5 years from such date, which interest shall be payable semiannually at the place whereat the principal is payable and for which interest coupons shall be attached to said bonds.

(2) If said bonds and coupons are issued by any county, they shall be signed by the chairman of the board of county commissioners of such county and attested by the clerk thereof and his seal attached thereto. If the bonds and coupons are issued by any incorporated city or town, the same shall be signed by the mayor and attested to by the city or town clerk and the seal thereof attached.

History: En. Sec. 7, p. 145, L. 1893; re-en. Sec. 4837, Pol. C. 1895; re-en. Sec. 3436, Rev. C. 1907; re-en. Sec. 5295, R.C.M. 1921; re-en. Sec. 5295, R.C.M. 1935; R.C.M. 1947, 11-2507; amd. Sec. 8, Ch. 500, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a rate not exceeding the limitations of 17-5-102" for "the rate of 6% per annum" near the beginning of (1)(e).

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

7-31-113. Disposition of bonds. (1) The board of county commissioners or council, as the case may be:

(a) may provide by said contract for the delivery of said bonds or any part thereof at their face value, upon the terms and conditions provided in said contract; or

(b) may sell and dispose of the same or any part thereof to raise funds to carry out said contract and use such funds for that purpose and for the payment of any expert or experts or any incidental expenses proper and necessary in and about said contract and the carrying out of the same.

(2) In the event said bonds are sold, they shall be sold for cash to the highest bidder, after public notice by publication in a paper of general circulation which may be printed and published in each county in the state and also by publication in at least three newspapers of general circulation printed and published in the cities of Boston and New York. Such notice shall be

published at least once a week and shall contain, in substance, a description of said bonds as set out in 7-31-112.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

7-31-114. Disposition of sale proceeds — sanitary coupon bond fund. The proceeds of the sales of bonds:

(1) shall be paid over to the county treasurer, the city treasurer, or the town clerk, as the case may be, and kept as a separate and independent fund for the purposes herein provided, to be known as the sanitary coupon bond fund; and

(2) shall be deposited and kept in such a manner and at such bank or banks as the board of county commissioners of the county or council of the city or town owning such funds may direct.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

7-31-115. Disbursement of money. Money in the sanitary coupon bond fund shall not be paid out or disbursed except upon warrants or orders drawn thereon by the board of county commissioners or council of such incorporated city or town, signed and attested in the manner provided by law.

History: En. Sec. 8, p. 145, L. 1893; re-en. Sec. 4838, Pol. C. 1895; re-en. Sec. 3437, Rev. C. 1907; re-en. Sec. 5296, R.C.M. 1921; re-en. Sec. 5296, R.C.M. 1935; R.C.M. 1947, 11-2508(part).

7-31-116. Payment of bonds and other obligations. (1) The faith of the county or incorporated city or town issuing bonds under the provisions of this part is solemnly pledged for the payment of the principal and interest according to the tenure of said bonds and the coupons attached to the same.

(2) The board of county commissioners of the county or council of the incorporated city or town issuing said bonds:

(a) shall ascertain and levy and assess a tax sufficient to pay the interest upon said bonds, which shall become a lien and be collected as other taxes; and

(b) shall form such sinking fund for the payment of the principal thereof as may be necessary and proper, in the manner provided by law or ordinance, which shall be kept as a separate fund.

(3) All bonds, coupons, orders, and warrants issued and drawn under the provisions of this part shall be promptly paid, registered, and entered in books kept for that purpose, with correct and proper entries made in respect thereto, and the same, when paid, shall be canceled and preserved, with proper entries made thereof, as provided by law in cases of other bonds, warrants, and orders.

History: En. Sec. 9, p. 146, L. 1893; re-en. Sec. 4839, Pol. C. 1895; re-en. Sec. 3438, Rev. C. 1907; re-en. Sec. 5297, R.C.M. 1921; re-en. Sec. 5297, R.C.M. 1935; R.C.M. 1947, 11-2509.

Parts 2 through 20 reserved

Part 21

General Provisions Affecting Counties

7-31-2101. Authorization to transfer funds for emergency relief. Whenever the governor shall issue a proclamation declaring that an emergency exists in any county requiring the relief of suffering of the inhabitants thereof caused by famine, destitution, conflagration, or other public calamity, the board of county commissioners of such county is authorized to transfer to the proper fund to be used for purposes of such relief any money in any other fund or funds of the county, but no money belonging to any bond sinking or interest fund or any school fund must be so transferred. The governor shall in his proclamation state the facts upon which such emergency is declared and shall specifically limit the time during which such transfers may be made.

History: En. Sec. 1, Ch. 43, L. 1933; re-en. Sec. 4470.3, R.C.M. 1935; R.C.M. 1947, 16-1107.

Parts 22 through 40 reserved

Part 41

General Provisions Affecting Municipalities

7-31-4101. Board of health. The city or town council has power to provide for a board of health and to prescribe its powers and duties and, when such board of health is provided, for the same to have jurisdiction within the city or town limits and within 3 miles thereof.

History: En. Subd. 44, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.43, R.C.M. 1935; R.C.M. 1947, 11-946.

7-31-4102. Sales of poisons and opium. (1) The city or town council has power to regulate the sales of poisons and to punish any person for selling or using opium or any preparation thereof, for having the same or any implement to be used in smoking it in his possession, or for keeping, maintaining, visiting, or contributing to the support of a room or place where the same is smoked or used.

(2) Druggists may sell opium or any preparation thereof, subject to the general laws of the state in relation thereto.

History: En. Subd. 61, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.60, R.C.M. 1935; R.C.M. 1947, 11-963.

7-31-4103. Ditches, drains, and flumes in municipalities. The city or town council has power to regulate the use and construction of irrigating ditches, drains, and flumes within or running through any city or town.

History: En. Subd. 82, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.81, R.C.M. 1935; R.C.M. 1947, 11-984.

7-31-4104. Suppression of fraud and immoral publications. The city or town council has power to suppress and punish all fraudulent devices and practices for the purpose of obtaining money or property and to prohibit the same or exhibition of immoral publications, prints, pictures, or illustrations.

History: En. Subd. 20, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.19, R.C.M. 1935; R.C.M. 1947, 11-922.

Part 42

Open Ditches

7-31-4201. Findings and purpose. (1) The legislature declares that the control of ditchwater in inhabited areas of Montana is affected with the public interest.

(2) The purpose of this part is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town.

History: **En. Sec. 1, Ch. 63, L. 1961; amd. Sec. 1, Ch. 306, L. 1969; R.C.M. 1947, 11-4001(part).**

7-31-4202. Interpretation of part. (1) This part shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace, and safety of the people of Montana. This part shall be construed merely as a regulation in the public interest so that the diversion, transportation, and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this part.

(2) Nothing in this part shall be construed as intending to effectuate the abandonment of any valid water right.

History: **En. Sec. 1, Ch. 63, L. 1961; amd. Sec. 1, Ch. 306, L. 1969; R.C.M. 1947, 11-4001(part).**

7-31-4203. Open ditch declared nuisance. Notwithstanding any provision contained in Title 85 or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an open ditch is a public nuisance if such city or town, acting through its governing body declares it to be such nuisance.

History: **En. Sec. 2, Ch. 63, L. 1961; amd. Sec. 2, Ch. 306, L. 1969; R.C.M. 1947, 11-4002.**

7-31-4204. Investigation and remedial measures related to open ditches. The governing body of the city or town is hereby given the power to:

(1) investigate the dangerous condition of such ditches within the corporate limits and declare any such ditch a public nuisance; and

(2) determine the measures necessary to remove the danger and public nuisance, including fencing or the use of culverts or other protective devices, based upon standards to be determined by such city or town.

History: **En. Sec. 3, Ch. 63, L. 1961; amd. Sec. 3, Ch. 306, L. 1969; R.C.M. 1947, 11-4003.**

7-31-4205. Procedure to close and fill ditch — notice. (1) When a public nuisance has been declared, as provided in this part, the city or town shall give public notice for at least 60 days to owners of the ditch and of any water rights affected that such ditch has been declared a public nuisance and that it shall be closed and filled unless the owners of such rights desire to keep the ditch open.

(2) Such notice shall include publication once each week for at least 8 successive weeks in an established newspaper published within the city or town if one exists or, in its absence, in the official county newspaper.

History: **En. Sec. 4, Ch. 63, L. 1961; R.C.M. 1947, 11-4004.**

7-31-4206. Procedure to maintain open ditch. (1) If a person claims that the water has not been abandoned and claims the right to use water in a ditch that the city or town has declared a public nuisance, he shall notify the city or town before the expiration of the 60-day period that he wishes to continue the use of such water within the city or town and that he, individually or with others, will provide such protective devices as ordered by the city or town.

(2) If such notice is given, the person or persons claiming such right or rights shall have a period not to exceed 6 months to remove the public nuisance in the manner ordered by the city or town.

(3) If the city or town approves the work, it shall permit the water to flow into the city or town. If the protective device is not provided or if it does not meet specifications required by the city or town, the city or town may designate such ditch abandoned and order it closed or filled when the 6-month period ends.

History: En. Sec. 5, Ch. 63, L. 1961; R.C.M. 1947, 11-4005.

7-31-4207. Exemption for commercial irrigation ditches — improvement districts for protection from open ditches. (1) This part does not apply to ditches carrying water used for commercial irrigation purposes.

(2) However, whenever the public interest or convenience may require, a city or town is hereby authorized and empowered to create a special improvement district for the purpose of building, constructing, acquiring by purchase, and maintaining devices intended to protect the safety of the public from open ditches carrying water. Such devices or improvements shall provide access to and shall not be constructed so as to hinder the operation and maintenance of the ditch. The owner or owners of open ditches carrying irrigation or other water shall not be included in any special improvement district under this part for the purpose of assessment to support the special improvement district for the installation, repair, or maintenance of any protective devices.

History: En. Sec. 6, Ch. 63, L. 1961; amd. Sec. 4, Ch. 306, L. 1969; R.C.M. 1947, 11-4006.

CHAPTER 32

LAW ENFORCEMENT

Part 1 — Department of Public Safety

Section

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Part 1

Department of Public Safety

7-32-101. Department of public safety authorized. In counties other than first- and second-class counties, on agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established a department of public safety in lieu of a police department and a sheriff's office.

History: **En. Sec. 1, Ch. 347, L. 1973; amd. Sec. 1, Ch. 146, L. 1975; R.C.M. 1947, 16-2726(part).**

7-32-102. Director of department of public safety. The director of the department of public safety shall be the sheriff, who may be elected or may be appointed by the public safety commission if the form of county government provides for an appointed sheriff. A director so appointed shall receive a majority of the votes of the public safety commission members voting on the question of his appointment.

History: **En. Sec. 2, Ch. 347, L. 1973; amd. Sec. 6, Ch. 146, L. 1975; R.C.M. 1947, 16-2727.**

7-32-103. Structure of department of public safety — duties. (1) The director shall have the powers and perform the duties conferred on and required of sheriffs, police officers, and chiefs of police, except in cases involving the discharge or termination of employment of subordinate employees.

(2) Officers and patrolmen of the city or town police department and deputies of the county sheriff's office shall be subordinate to the director and shall have the power and perform the duties conferred on and required of police officers and patrolmen in cities and towns and of sheriff's deputies in counties, as required by state law and municipal ordinance.

History: **En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(part).**

7-32-104. Salaries. The provisions of 7-4-2503 notwithstanding, the salaries of the director and employees of the department of public safety shall be established by the public safety commission and shall be paid by the city or town with the board of county commissioners. Said salaries in any event shall not be less than those specified in 7-4-2503.

History: **En. Sec. 4, Ch. 347, L. 1973; amd. Sec. 11, Ch. 146, L. 1975; R.C.M. 1947, 16-2729.**

7-32-105. Officers' status for purpose of enforcing and executing court orders. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees, and orders of court, and making sales thereunder and returns thereof, the director shall be known and designated as "sheriff of the city and county of ...." and each police officer, patrolman, and deputy sheriff shall be known and designated as "deputy sheriff".

History: **En. Sec. 5, Ch. 347, L. 1973; R.C.M. 1947, 16-2730.**

7-32-106. Meaning of terms employee and subordinate employee. "Employee" or "subordinate employee" means but is not limited to any officer or patrolman of the city or town police department, any deputy of the county sheriff's office, or any person employed as a clerk, dispatcher, or secretary by the department of public safety or so employed by the city or town police department or the county sheriff's office prior to the establishment of the department of safety.

History: **En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(1).**

7-32-107. Hearing required for discharge of subordinate employee. In all cases involving the discharge or the termination of employment of any subordinate employee by the director of the department of public safety, such employee is entitled to a full hearing as provided in this part, except that those employees covered under collective bargaining agreements as provided for in Title 39, chapter 31 shall be entitled to use any grievance procedure provided for within the collective bargaining agreement.

History: **En. Sec. 3, Ch. 347, L. 1973; amd. Sec. 7, Ch. 146, L. 1975; R.C.M. 1947, 16-2728(2).**

7-32-108. Hearing procedure for employee discharged by an appointed director. (1) A director appointed by the public safety commission shall at the time of the discharge or termination of the employment of any subordinate employee provide such employee a written statement, subscribed and sworn to by the director, setting forth the cause or causes for the discharge or termination of employment.

(2) Within 30 days from the date of discharge or termination of his employment, such employee may make application to the public safety commission for a hearing before the commission on the charges resulting in the employee's discharge or termination of employment. Such employee may be present at the hearing in person and may be represented by legal counsel. The commission shall keep a record of the proceedings in such cases, and the records shall be a matter of public record. For the purpose of keeping a record of the proceedings in such a case, the department of public safety shall provide the commission with a person qualified to keep a record of the proceedings. Such person may be an employee of the department.

(3) The commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination of employment have been proven.

(4) The commission shall have the power, in all cases wherein a majority of the commission members find the charges not proven, to reinstate any employee to the same position he held and at the same salary he received prior to discharge or termination of employment.

(5) In all cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision of the commission to the district court of the county wherein the employee was employed. Such appeal must be initiated within 60 days of the ruling of the commission.

History: **En. 16-2728.1 by Sec. 8, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.1.**

7-32-109. Hearing procedure for employee discharged by elected director. (1) A director who is elected shall at the time of the discharge or termination of employment of any subordinate employee be required to follow the procedures of notice required of an appointed director.

(2) Any employee discharged or terminated by an elected director is entitled to a hearing before the public safety commission in the manner provided in 7-32-108.

(3) The public safety commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination have been proven.

(4) The commission may request that the elected director reinstate an employee in all cases wherein a majority of the commission members find the charges not proven. The director may deny such a request for reinstatement but shall provide the commission with a written statement, subscribed and sworn to by the director, setting forth the reason or reasons for the refusal to reinstate the discharged or terminated employee. Such written statement shall become a part of the records of the proceedings of the commission and shall be open to public scrutiny.

(5) In all cases wherein the commission finds the charges not proven but the elected director refuses to reinstate the discharged or terminated employee or cases wherein a majority of the commission members find the

charges proven, the employee may appeal the decision in the manner provided in 7-32-108.

History: En. 16-2728.2 by Sec. 9, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.2.

7-32-110. Reinstatement of discharged employee who prevails in district court. In the event that an employee prevails in an appeal to the district court, he shall be entitled to be reinstated to the same position he held and at the same salary he received prior to his discharge or termination by the director.

History: En. 16-2728.3 by Sec. 10, Ch. 146, L. 1975; R.C.M. 1947, 16-2728.3.

7-32-111 through 7-32-120 reserved.

7-32-121. Public safety commission. (1) The department of public safety shall be under the supervision of a public safety commission.

(2) The commission shall consist of three, five, or seven members. Each member of the commission shall serve a 4-year term and shall be appointed as provided in 7-32-121 through 7-32-124.

(3) No commission member may be an official of any unit of local government.

History: (1), (2)En. Sec. 1, Ch. 347, L. 1973; amd. Sec. 1, Ch. 146, L. 1975; Sec. 16-2726, R.C.M. 1947; (3)En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; Sec. 69-2726.1, R.C.M. 1947; R.C.M. 1947, 16-2726(part), 16-2726.1(5).

7-32-122. Appointment to three-member public safety commission. (1) Upon the creation of a three-member commission:

(a) one member shall be appointed by the legislative body of the city or town;

(b) one shall be appointed by the board of county commissioners; and

(c) one shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for appointment by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment.

(3) Initially, one commission member shall serve a 4-year term and two commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of his term.

History: En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(1).

7-32-123. Appointment to five-member public safety commission. (1) Upon the creation of a five-member commission:

(a) two members shall be appointed by the legislative body of the city or town;

(b) two shall be appointed by the board of county commissioners; and

(c) one shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a five-member commission by the joint meeting must receive a majority of the

votes of the members of the board of county commissioners and a majority of the votes of members of the legislative body of the city or town voting on the question of his appointment.

(3) Initially, two commission members shall each serve a 4-year term and three commission members shall each serve a 2-year term. Each commission member must draw a lot to determine the length of his term.

History: **En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(2).**

7-32-124. Appointment to seven-member public safety commission. (1) Upon the creation of a seven-member commission:

(a) three members shall be appointed by the legislative body of the city or town;

(b) three shall be appointed by the board of county commissioners; and

(c) one shall be appointed by the members of the board of county commissioners and the members of the city or town, meeting in joint session.

(2) In order to be appointed, a candidate for the appointment to a seven-member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment.

(3) Initially, three commission members shall each serve a 4-year term and four commission members shall each serve a 2-year term. Each commission member shall draw a lot to determine the length of his term.

History: **En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(3).**

7-32-125. Residency requirements for public safety commissioners. Each commission member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

History: **En. 69-2726.1 by Sec. 2, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.1(4).**

7-32-126. Vacancies and succession. (1) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the person he replaces. A person so appointed shall serve out the unexpired portion of the term of the person he replaces.

(2) The successor for a commission member whose term has expired shall be appointed in the same manner used to appoint the commission member he succeeds.

(3) A member of a public safety commission is eligible for reappointment to the commission at the end of his term.

History: **En. 69-2726.2 by Sec. 3, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.2(1) thru (3).**

7-32-127. Organization of public safety commission. (1) Not later than 60 days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners and the legislative body of the city or town.

(2) At the first meeting of the commission, the member jointly appointed by the board of county commissioners and the legislative body of the city or town shall be designated by the commission to serve as temporary chairman. As its first official act, the commission members shall select a chairman and vice-chairman from their own number.

(3) The chairman of the commission shall preside over all meetings and hearings of the commission. In the absence or inability of the chairman, the vice-chairman shall preside over all meetings and hearings of the commission.

History: **En. 69-2726.3 by Sec. 4, Ch. 146, L. 1975; R.C.M. 1947, 69-2726.3(1) thru (3).**

7-32-128. Meetings. Meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the commission members. Hearings in all cases involving employee discharge or termination shall be held upon request of any employee so discharged or terminated.

History: **En. 69-2726.3 by Sec. 4, Ch. 146, L. 1975; R.C.M. 1947, 69-2726.3(4).**

7-32-129. Compensation and expenses. Members of a public safety commission shall receive no compensation but may receive actual and necessary travel and other expenses incurred in the performance of official duties. Such costs shall be borne by the county if the commission member is appointed by the board of county commissioners, by the city or town by which appointed, or borne equally by the county and city or town if jointly appointed.

History: **En. 69-2726.2 by Sec. 3, Ch. 146, L. 1975; R.C.M. 1947, 16-2726.2(4).**

Part 2

Reserve and Auxiliary Officers

7-32-201. Definitions. As used in this part, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities.

(2) "General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

(3) "Law enforcement agency" means a law enforcement service provided directly by a local government.

(4) "Law enforcement officer" means a sworn, full-time, employed member of a law enforcement agency who is a peace officer as defined in 46-1-201(8) and has arrest authority as described in 46-6-401.

(5) "Reserve officer" means a sworn, part-time, volunteer member of a law enforcement agency who is a peace officer as defined in 46-1-201(8) and has arrest authority as described in 46-6-401 only when authorized to perform these functions as a representative of the law enforcement agency.

History: **En. 11-1851 by Sec. 1, Ch. 85, L. 1977; R.C.M. 1947, 11-1855(part).**

7-32-202. Prohibition on participation in certain pension and retirement systems. (1) A reserve officer may not participate in any pension or retirement system established for full-time law enforcement officers.

(2) An auxiliary officer may not participate in any pension or retirement system established for full-time law enforcement officers.

History: **(1)En. 11-1852 by Sec. 2, Ch. 85, L. 1977; Sec. 11-1856, R.C.M. 1947; (2)En. 11-1854 by Sec. 4, Ch. 85, L. 1977; Sec. 11-1858, R.C.M. 1947; R.C.M. 1947, 11-1856(9), 11-1858(3).**

7-32-203. Provision of workers' compensation coverage. (1) Each law enforcement agency that utilizes reserve officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency. Coverage shall be provided through the state compensation insurance fund, and the law enforcement agencies shall pay to the state fund an appropriate premium, as established by the state fund, to cover the insurance risk of providing coverage to the officers.

(2) Each law enforcement agency that utilizes auxiliary officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency.

History: (1)En. 11-1852 by Sec. 2, Ch. 85, L. 1977; Sec. 11-1856, R.C.M. 1947; (2)En. 11-1854 by Sec. 4, Ch. 85, L. 1977; Sec. 11-1858, R.C.M. 1947; R.C.M. 1947, 11-1856(10), 11-1858(4).

7-32-204 through 7-32-210 reserved.

7-32-211. Reserve officers authorized. A local government may authorize reserve officers. A person who meets minimum standards for appointment as a peace officer may be appointed as a reserve officer.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).

7-32-212. Prohibition on reduction of full-time officers. A local government may not reduce the authorized number of full-time law enforcement officers through the appointment or utilization of reserve officers.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(11).

7-32-213. Qualifications for appointment as reserve officer. To be appointed a reserve officer, a person must:

(1) have resided in the state continuously for at least 1 year prior to the appointment and in the county where such appointment is made for a period of at least 6 months prior to the date of the appointment;

(2) be a citizen of the United States;

(3) be at least 18 years of age;

(4) be fingerprinted, and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(5) not have been convicted of a crime for which he could have been imprisoned in a federal penitentiary or state prison;

(6) be of good moral character as determined by a thorough background investigation;

(7) be a graduate of an accredited high school or the equivalent;

(8) be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and

(9) possess a valid Montana driver's license.

History: En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).

7-32-214. Basic training program required. (1) No reserve officer may be authorized to function as a representative of a law enforcement agency performing general law enforcement duties after 2 years from the original appointment unless the reserve officer has satisfactorily completed a minimum 88-hour basic training program which must include but need not be limited to the following course content:

(a) introduction and orientation—1 hour;
(b) police ethics and professionalism—1 hour;
(c) criminal law—4 hours;
(d) laws of arrest—4 hours;
(e) criminal evidence—4 hours;
(f) administration of criminal law—2 hours;
(g) communications, reports, and records—2 hours;
(h) crime investigations—3 hours;
(i) interviews and interrogations—2 hours;
(j) patrol procedures—6 hours;
(k) crisis intervention—4 hours;
(l) police human and community relations—3 hours;
(m) juvenile procedures—2 hours;
(n) defensive tactics—4 hours;
(o) crowd control tactics—4 hours;
(p) firearms training—30 hours;
(q) first aid—10 hours; and
(r) examination—2 hours.

(2) The law enforcement agency is responsible for training its reserve officers in accordance with minimum training standards established by the Montana board of crime control.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(2),(3).**

7-32-215. Reserve manual required. The authorizing law enforcement agency establishing a law enforcement reserve force shall adopt and publish a manual setting forth the minimum qualifications, minimum training standards, and standard operating procedures for reserve officers.

History: **En. 11-1853 by Sec. 3, Ch. 85, L. 1977; R.C.M. 1947, 11-1857.**

7-32-216. Limitations on activities of reserve officers. (1) A reserve officer may serve as a peace officer only on the orders and at the direction of the chief law enforcement administrator of the local government.

(2) A reserve officer may act only in a supplementary capacity to the law enforcement agency.

(3) Reserve officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer whose span of control would be considered within reasonable limits.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).**

7-32-217. Restrictions on carrying weapons. No reserve officer may carry a weapon:

(1) while on assigned duty until the reserve officer has qualified on the firing range with a weapon in compliance with the firearms qualifying course conducted by the Montana law enforcement academy; and

(2) until authorized by the chief law enforcement administrator to carry a weapon.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(7).**

7-32-218. Status of reserve officer upon activation. A reserve officer is vested with the same powers, rights, privileges, obligations, and duties as any other peace officer of this state upon being activated by the chief law enforcement administrator of the local government and while on assigned duty only.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(8).**

7-32-219. Reserve force coordinator. The chief law enforcement administrator of a law enforcement agency with reserve officers shall appoint a full-time law enforcement officer of the agency as a reserve force coordinator. The reserve force coordinator shall coordinate the activities of the reserve force with those of the law enforcement agency.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).**

7-32-220. Appointment of reserve officer to full-time position. A reserve officer may be appointed as a full-time law enforcement officer through the procedures provided in Montana law for such appointments.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(part).**

7-32-221. Termination of reserve officers. Reserve officers serve at the pleasure of the chief law enforcement administrator and may be terminated at any time by the chief law enforcement administrator by written notification without any cause.

History: **En. 11-1852 by Sec. 2, Ch. 85, L. 1977; R.C.M. 1947, 11-1856(12).**

7-32-222 through 7-32-230 reserved.

7-32-231. Auxiliary officers authorized. A local government may authorize auxiliary officers only on the orders and at the direction of the chief law enforcement administrator of the local government.

History: **En. 11-1854 by Sec. 4, Ch. 85, L. 1977; R.C.M. 1947, 11-1858(part).**

7-32-232. Role of auxiliary officers. (1) Auxiliary officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer.

(2) No auxiliary officer may carry a weapon while on assigned duty.

History: **En. 11-1854 by Sec. 4, Ch. 85, L. 1977; R.C.M. 1947, 11-1858(1)(a), (b), (2).**

7-32-233. Limitation on arrest authority of auxiliary officer. An auxiliary officer has only the arrest authority granted a private person in 46-6-502 and 46-6-503.

History: **En. 11-1851 by Sec. 1, Ch. 85, L. 1977; R.C.M. 1947, 11-1855(part).**

7-32-234. Exceptions. Provisions of 7-32-211, 7-32-213, and 7-32-214 do not apply to auxiliary officers, to sworn volunteer peace officers who are not assigned to general law enforcement duties, or to members of a posse organized to quell public disturbance or domestic violence in accordance with 7-32-2121(6).

History: **En. 11-1855 by Sec. 5, Ch. 85, L. 1977; R.C.M. 1947, 11-1859.**

7-32-235. Search and rescue units under control of county sheriff. Except in time of martial rule as provided in 10-1-106, search and rescue units and their officers are under the operational control and supervision of the county sheriff having jurisdiction.

History: **En. Sec. 2, Ch. 42, L. 1981.**

Compiler's Comments

Codification Instruction: Section 3, Ch. 42, L. 1981, provided: "Section 2 [7-32-235] is intended to be codified as an integral part of Title 7, chapter 32, part 2, and the provisions of Title 7, chapter 32, part 2, apply to section 2."

Part 3

Qualifications of Law Enforcement Officers

7-32-301. Residency requirements. No sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance shall hereafter appoint as such special deputy, marshal, or policeman any person who shall not have resided continuously in this state for a period of at least 1 year and in the county where such appointment is made for a period of at least 6 months prior to the date of said appointment.

History: **En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).**

7-32-302. Waiver of residency requirements. The person or body authorized by law to appoint special deputies, marshals, or policemen may in its discretion waive residency requirements.

History: **En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).**

7-32-303. Employment standards of board of crime control. No sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or policemen in this state to preserve the public peace and prevent or quell public disturbance shall hereafter appoint as such special deputy, marshal, or policeman any person who does not meet the minimum qualifying standards for employment promulgated by the board of crime control.

History: **En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).**

7-32-304. Exception for organizing posse. The provisions of this part shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

History: **En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).**

Parts 4 through 20 reserved

Part 21

Sheriff's Department

7-32-2101. Vacancy in office of sheriff. When the sheriff is committed under an execution or commitment for not paying over money received by him by virtue of his office and remains committed for 60 days, his office is vacant.

History: En. Sec. 4394, Pol. C. 1895; re-en. Sec. 3023, Rev. C. 1907; re-en. Sec. 4787, R.C.M. 1921; Cal. Pol. C. Sec. 4186; re-en. Sec. 4787, R.C.M. 1935; R.C.M. 1947, 16-2715.

7-32-2102. Undersheriff to be appointed. The sheriff, as soon as may be after he enters upon the duties of his office, must, except in counties of the seventh and eighth classes, appoint some person undersheriff to hold during the pleasure of the sheriff. Such undersheriff has the same powers and duties as a deputy sheriff.

History: En. Sec. 851, 5th Div. Comp. Stat. 1887; amd. Sec. 4382, Pol. C. 1895; re-en. Sec. 3011, Rev. C. 1907; re-en. Sec. 4775, R.C.M. 1921; amd. Sec. 1, Ch. 24, L. 1933; re-en. Sec. 4775, R.C.M. 1935; R.C.M. 1947, 16-2703.

7-32-2103. Repealed. Sec. 1, Ch. 194, L. 1981.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 2, Ch. 263, L. 1979.

7-32-2104. Qualifications of deputy sheriff. (1) No sheriff shall employ as a deputy any individual who does not possess all the following qualifications:

(a) graduate of an accredited high school or the equivalent thereof;

(b) good moral character;

(c) never been convicted of a felony;

(d) has not within 5 years immediately preceding his date of employment been affiliated in any manner with a subversive organization;

(e) been examined by a physician licensed to practice in the state of Montana within 30 days immediately preceding his date of employment and has been pronounced in good physical condition.

(2) This section shall not be applicable to any deputy sheriff whose term of employment commenced prior to March 2, 1967.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(2).

7-32-2105. Probationary period for deputy sheriff. Any person whose term of employment as a deputy sheriff commences subsequent to March 2, 1967, shall serve a 1-year probationary period, and during this 1-year period the employment of any such deputy may be terminated by the sheriff with or without cause and without recourse to the sheriff under the terms of 7-32-2104 through 7-32-2110.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971;

amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(3).

7-32-2106. Attendance at Montana law enforcement academy required for deputy sheriffs. (1) It shall be the duty of the sheriff to cause all deputies whose term of employment commenced subsequent to March 2, 1967, to attend that academy provided for by Title 44, chapter 10, except that the sheriff may accept reasonable delays in attendance at the academy as shown by the deputy's declared intention of attending.

(2) Failure to satisfactorily complete the course offered by said academy shall be deemed cause to terminate a deputy's employment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(4).

7-32-2107. Tenure for deputy sheriffs — grounds for termination of employment. Any deputy sheriff now employed or who may hereafter be employed shall continue in service until relieved of his employment in the manner hereinafter provided and only for one or more of the following specified causes:

(1) conviction of a felony subsequent to the commencement of such employment;

(2) willful disobedience of an order or orders given by the sheriff;

(3) drinking intoxicating liquor while in uniform or while on official duty or being intoxicated in a public place while in uniform or while on official duty;

(4) sleeping while on duty;

(5) incapacity materially affecting ability to perform official duties;

(6) gross inefficiency in the performance of official duties.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(5).

7-32-2108. Written notice of termination of employment required. When a sheriff terminates the employment of a deputy, he shall at the time of termination cause to be served upon said deputy a statement in writing, subscribed and sworn to by the sheriff, setting forth the cause or causes for the discharge or termination of the deputy's employment.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(6).

7-32-2109. Right to hearing on termination of deputy sheriff's employment. Any deputy sheriff whose employment is terminated may, within 30 days from the date of the termination of his employment, make application to the district court of the county wherein the deputy was employed for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971;

amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

7-32-2110. Reinstatement of deputy sheriff. In the event that a deputy prevails at the hearing provided for in 7-32-2109, he shall be entitled to be reinstated as a deputy sheriff at the same salary he received prior to his discharge or termination of employment and he shall also be entitled to any rights that might have accrued to his benefit prior to his discharge or termination of employment, including that salary which he would have received but for the termination.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

7-32-2111. Hours of work for deputy sheriff of county of first or second class. Any person employed as a deputy sheriff of a first- or second-class county shall not be forced to work in excess of 40 hours per week except in case of an emergency and shall be entitled to 2 days off in each 7-day period.

History: En 16-3705.1 by Sec. 1, Ch. 329, L. 1973; R.C.M. 1947, 16-3705.1

7-32-2112. Exception for organizing posse. The provisions of 7-32-301 through 7-32-303 shall not apply in cases of the officers listed in 7-32-301 summoning a posse forthwith to quell public disturbance or domestic violence.

History: En. Sec. 4598, Pol. C. 1895; re-en. Sec. 3124, Rev. C. 1907; re-en. Sec. 4879, R.C.M. 1921; re-en. Sec. 4879, R.C.M. 1935; amd. Sec. 1, Ch. 257, L. 1967; amd. Sec. 2, Ch. 66, L. 1971; amd. Sec.1, Ch. 81, L. 1971; amd. Sec. 1, Ch. 62, L. 1973; amd. Sec. 2, Ch. 188, L. 1975; R.C.M. 1947, 16-3705(part).

7-32-2113 through 7-32-2120 reserved.

7-32-2121. Duties of sheriff. The sheriff must:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of dumb animals;

(5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of the county as are necessary in the execution of the sheriff's duties;

(7) take charge of and keep the county jail and the prisoners therein;

(8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of reception;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the papers without delay;

(11) take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service; and

(12) perform such other duties as are required by law.

History: (1) thru (10)En. Sec. 4381, Pol. C. 1895; re-en. Sec. 3010, Rev. C. 1907; re-en. Sec. 4774, R.C.M. 1921; Cal. Pol. C. Sec. 4176; amd. Sec. 1, Ch. 157, L. 1925; re-en. Sec. 4774, R.C.M. 1935; amd. Sec. 10, Ch. 535, L. 1975; Sec. 16-2702, R.C.M. 1947; (11)En. Sec. 1, Ch. 42, L. 1981; (12)En. Sec. 4401, Pol. C. 1895; re-en. Sec. 3030, Rev. C. 1907; re-en. Sec. 4794, R.C.M. 1921; Cal. Pol. C. Sec. 4193; re-en. Sec. 4794, R.C.M. 1935; Sec. 16-2722, R.C.M. 1947; R.C.M. 1947, 16-2702, 16-2722; amd. Sec. 3, Ch. 263, L. 1979; amd. Sec. 1, Ch. 42, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (11).

7-32-2122. Duties of undersheriff. Whenever a vacancy occurs in the office of sheriff, the undersheriff must in all things execute the office of sheriff until a sheriff is elected or appointed and duly qualified.

History: En. Sec. 4383, Pol. C. 1895; re-en. Sec. 3012, Rev. C. 1907; re-en. Sec. 4776, R.C.M. 1921; re-en. Sec. 4776, R.C.M. 1935; R.C.M. 1947, 16-2704(part).

7-32-2123. Appointment of deputy sheriff to act as jailer. The sheriff may appoint two deputies in counties of the first, second, or third class and one deputy in counties of the fourth, fifth, sixth, or seventh class who shall act as jailer and receive the same salary as other deputy sheriffs.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 4, Ch. 263, L. 1979.

7-32-2124. Service of papers on sheriff. Service of a paper, other than a process, upon the sheriff may be made by delivering it to him or to one of his deputies or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

History: En. Sec. 4398, Pol. C. 1895; re-en. Sec. 3027, Rev. C. 1907; re-en. Sec. 4791, R.C.M. 1921; Cal. Pol. C. Sec. 4190; re-en. Sec. 4791, R.C.M. 1935; R.C.M. 1947, 16-2719.

7-32-2125. Operation of sheriff's vehicle. The board of county commissioners may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by him and may also pay for the operation and maintenance of those vehicles from county funds.

History: En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971; R.C.M. 1947, 16-2724(part).

7-32-2126. Liability insurance for privately owned vehicles when used on official business. (1) The board of county commissioners shall provide liability insurance for not more than one privately owned vehicle used by the sheriff, not more than one privately owned vehicle used by the undersheriff, and not more than one privately owned vehicle used by each deputy sheriff when the vehicles are used on official business. The insurance shall be paid for from county funds and shall provide full comprehensive and collision coverage plus minimum coverage of $100,000 for each person for bodily injury and medical expenses, $300,000 for all persons per accident, and $50,000 per accident for property damage.

(2) This section shall not apply to counties furnishing motor vehicles to the sheriff's department pursuant to the provisions of 7-32-2125.

History: En. Sec. 2, Ch. 340, L. 1971; R.C.M. 1947, 16-2725.

7-32-2127. Prosecution of action involving county law enforcement personnel brought against executor or administrator. Any action for default or misconduct of any sheriff, his undersheriff, his jailer, or any of his deputies may be prosecuted against the executors or administrators of such sheriff.

History: En. Sec. 4384, Pol. C. 1895; re-en. Sec. 3013, Rev. C. 1907; re-en. Sec. 4777, R.C.M. 1921; re-en. Sec. 4777, R.C.M. 1935; R.C.M. 1947, 16-2705.

7-32-2128. False claims by sheriff. (1) Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners, for furnishing food and supplies therefor, or for any service rendered in connection therewith or presents to said board false items in a claim or false vouchers or makes any profit whatever out of the board or keeping of prisoners in his custody and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board is guilty of a misdemeanor.

(2) Every sheriff who falsely represents to the board of county commissioners or attorney general his actual traveling expenses in the performance of any official duty or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of such duty is guilty of a misdemeanor.

History: (1)En. Sec. 4628, Pol. C. 1895; re-en. Sec. 3161, Rev. C. 1907; re-en. Sec. 4910, R.C.M. 1921; re-en. Sec. 4910, R.C.M. 1935; amd. Sec. 19, Ch. 513, L. 1973; Sec. 25-229, R.C.M. 1947; (2)En. Sec. 4627, Pol. C. 1895; re-en. Sec. 3160, Rev. C. 1907; re-en. Sec. 4909, R.C.M. 1921; re-en. Sec. 4909, R.C.M. 1935; amd. Sec. 18, Ch. 513, L. 1973; amd. Sec. 99, Ch. 326, L. 1974; Sec. 25-225, R.C.M. 1947; R.C.M. 1947, 25-225, 25-229; amd. Sec. 1, Ch. 446, L. 1979.

7-32-2129. Misconduct of undersheriff. Any default, misfeasance, or malfeasance of such undersheriff acting as sheriff pursuant to 7-32-2122, as well as before, is a breach of the condition of the bond given by the sheriff who appointed him and also a breach of the condition of the bond given by him to the sheriff.

History: En. Sec. 4383, Pol. C. 1895; re-en. Sec. 3012, Rev. C. 1907; re-en. Sec. 4776, R.C.M. 1921; re-en. Sec. 4776, R.C.M. 1935; R.C.M. 1947, 16-2704(part).

7-32-2130. Liability for refusing to pay over money. If on demand the sheriff neglects or refuses to pay over to the person entitled thereto any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof, with 25% damages and interest at the rate of 10% per month from the time of demand, may be recovered by such person.

History: En. Sec. 4389, Pol. C. 1895; re-en. Sec. 3018, Rev. C. 1907; re-en. Sec. 4782, R.C.M. 1921; Cal. Pol. C. Sec. 4181; re-en. Sec. 4782, R.C.M. 1935; R.C.M. 1947, 16-2710.

7-32-2131. Liability in civil actions. (1) If the sheriff does not return a notice or process in his possession with the necessary endorsement thereon without delay, he is liable to the party aggrieved for $200 and for all damages sustained by him.

(2) If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon or sold, he is liable to the creditor for the value of such property.

(3) No direction or authority by a party or his attorney to a sheriff in respect to the execution of process or return thereof or any act or omission relating thereto is available to discharge or excuse the sheriff from a liability for neglect or misconduct unless it is contained in a writing signed by the attorney of the party or by the party.

(4) "Process", as used in this part, includes all writs, warrants, summons, and orders of courts of justice or judicial officers. "Notice" includes all papers and orders (except process) required to be served in any proceeding before any court, board, or officer or required by law to be served independently of such proceeding.

History: (1)En. Sec. 4387, Pol. C. 1895; re-en. Sec. 3016, Rev. C. 1907; re-en. Sec. 4780, R.C.M. 1921; Cal. Pol. C. Sec. 4179; re-en. Sec. 4780, R.C.M. 1935; Sec. 16-2708, R.C.M. 1947; (2)En. Sec. 4388, Pol. C. 1895; re-en. Sec. 3017, Rev. C. 1907; re-en. Sec. 4781, R.C.M. 1921; Cal. Pol. C. Sec. 4180; re-en. Sec. 4781, R.C.M. 1935; Sec. 16-2709, R.C.M. 1947; (3)En. Sec. 4393, Pol. C. 1895; re-en. Sec. 3022, Rev. C. 1907; re-en. Sec. 4786, R.C.M. 1921; Cal. Pol. C. Sec. 4185; re-en. Sec. 4786, R.C.M. 1935; amd. Sec. 1, Ch. 426, L. 1977; Sec. 16-2714, R.C.M. 1947; (4)En. Sec. 4380, Pol. C. 1895; re-en. Sec. 3009, Rev. C. 1907; re-en. Sec. 4773, R.C.M. 1921; Cal. Pol. C. Sec. 4175; re-en. Sec. 4773, R.C.M. 1935; Sec. 16-2701, R.C.M. 1947; R.C.M. 1947, 16-2701, 16-2708, 16-2709, 16-2714(part).

7-32-2132. Liability for escape in civil actions. (1) A sheriff who fails to prevent the escape or rescue of a person arrested in a civil action without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold for bail or upon a surrender in exoneration of bail before judgment, the sheriff is liable to the plaintiff for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, the sheriff is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, the sheriff is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue, the sheriff may introduce evidence in mitigation or exculpation.

(3) An action may not be maintained against a sheriff for a rescue or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff.

History: En. Secs. 4390, 4391, 4392, Pol. C. 1895; re-en. Secs. 3019, 3020, 3021, Rev. C. 1907; re-en. Secs. 4783, 4784, 4785, R.C.M. 1921; Cal. Pol. C. Secs. 4182, 4183, 4184; re-en. Secs. 4783, 4784, 4785, R.C.M. 1935; R.C.M. 1947, 16-2711, 16-2712, 16-2713; amd. Sec. 5, Ch. 263, L. 1979.

7-32-2133 through 7-32-2140 reserved.

7-32-2141. Fees of the sheriff. (1) The sheriff shall receive the following fees:

(a) for the service of summons and complaint on each defendant, $5;

(b) for making a return of a summons for a person not found in the county, in addition to actual mileage traveled, $5;

(c) for levying and serving each writ of attachment of execution on real or personal property, $5;

(d) for service of attachment on the body or order of arrest on each defendant, $5;

(e) for the service of affidavit, order, and undertaking in claim and delivery, $5;

(f) for serving a subpoena, $2.50 for each witness summoned;

(g) for serving writ of possession or restitution, $5;

(h) for trial of the right of property or damages, including all services except mileage, $7;

(i) for taking bond or undertaking in any case authorized by law, $5;

(j) for serving every notice, rule, or order, $5 for each person served;

(k) for copy of any writ, process, or other paper when demanded or required by law, 25 cents for each page;

(l) for posting notices and advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, $5;

(m) for holding any sheriff's sale for personal or real property on execution or under any judgment or order of sale, $7.50;

(n) for cancellation or postponement of sheriff's sale, $5.

(2) All fees collected by the sheriff for the services provided in subsection (1) must be paid to the county treasurer as provided in subsection (1) of 7-4-2511 and the fees must be credited by the county treasurer to the sheriff's budget.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(1); amd. Sec. 1, Ch. 174, L. 1981.

Compiler's Comments

1981 Amendment: Increased the fee in (1)(a), (1)(c), (1)(d), (1)(e), (1)(i), (1)(j), and (1)(l) from $2 to $5; increased the fee in (1)(f) from $1 to $2.50; increased the fee in (1)(g) from $4 to $5; increased the fee in (1)(h) from $5 to $7; added subsections (1)(b), (1)(m), (1)(n), and (2); and made minor changes in phraseology.

7-32-2142. Fees of the sheriff for holding property. For the expense in taking and keeping possession of and preserving property under attachment, execution, or other process, the sheriff shall receive such sum as the court or judge may order, not to exceed the actual expense incurred. No keeper must receive to exceed $10 per day, and no keeper must be employed without an order of court or be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property shall be placed in charge of a keeper if it can be safely and securely stored or where there is no reasonable danger of loss.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(2).

7-32-2143. Mileage and expenses of sheriff in general. (1) Except as provided in 7-32-2144 and 7-32-2145, in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail only his actual expenses when such travel is made by railroad or airline; and when travel is other than by railroad or airline, he shall receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail. He shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and feeding such persons during such transportation. Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, only one mileage may be charged.

(2) No mileage may be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

(3) (a) No mileage may be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the same accompanies the summons and the service thereof may be made at the time of the service of the summons, except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, only one mileage may be allowed or charged; and in the service of subpoenas, only one mileage may be charged when the persons named therein live in the same place or in the same direction; but mileage may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed only from such place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, only one mileage may be allowed.

(b) When any sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case may be allowed for less than 1 mile actually traveled.

History: Ap. p. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 25-226, R.C.M. 1947; (2)En. Sec. 1, Ch. 114, L. 1969; amd. Sec. 1, Ch. 340, L. 1971; Sec. 16-2724, R.C.M. 1947; Ap. p. Secs. 1, 2, p. 7, L. 1881; re-en. Sec. 76, 1st Div. comp. Stat. 1887; en. Sec. 640, C. Civ. Proc. 1895; re-en. Sec. 640 C. Civ. Proc. 1895; re-en. Sec. 6523, Rev. C. 1907; re-en. Sec. 9120, R.C.M. 1921; re-en. Sec. 9120, R.C.M. 1935; Sec. 93-3016, R.C.M. 1947; (3)(b)En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4900, R.C.M. 1921; re-en. Sec. 4900, R.C.M. 1935; Sec. 25-216, R.C.M. 1947; R.C.M. 1947, 16-2724(part), 25-216(part), 25-226(part), 93-3016(part); amd. Sec. 6, Ch. 263, L. 1979.

7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons. (1) A sheriff delivering prisoners at the state prison or a juvenile correctional facility or mentally ill persons at the Warm Springs state hospital or other mental health facility receives actual expenses necessarily incurred in their transportation. The expenses include the expenses of the sheriff in going to and returning from the institution. The sheriff shall take vouchers for every item of expense. The amount of these expenses, as shown by the vouchers when presented by the sheriff, shall be audited and allowed by the attorney general or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in subsection (2). No other or further compensation may be received by sheriffs for such expenses.

(2) Unless otherwise provided, while in the discharge of his duties, both civil and criminal, the sheriff receives a mileage allowance as provided in 2-18-503. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and feeding persons ordered by the court as provided in 2-18-501 through 2-18-503. The county is not liable for and the board of county commissioners may not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for subsistence in cases where mileage is allowed under this section, the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: Ap. p. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R.C.M. 1921; re-en. Sec. 4885, R.C.M. 1935; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949; amd. Sec. 1, Ch. 82, L. 1957; amd. Sec. 85, Ch. 199, L. 1965; amd. Sec. 1, Ch. 455, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 7, Ch. 439, L. 1975; Sec. 16-2723, R.C.M. 1947; Ap. p. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; Sec. 26-226, R.C.M. 1947; R.C.M. 1947, 16-2723, 26-226(part); amd. Sec. 7, Ch. 263, L. 1979; amd. Sec. 2, Ch. 446, L. 1979.

7-32-2145. Mileage and expenses of sheriff for return of fugitives. For trips made for the return of fugitives apprehended and arrested outside the county, the sheriff shall receive the actual necessary expenses incurred in going for and returning with such fugitive. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in 7-32-2143.

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R.C.M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; re-en. Sec. 4916, R.C.M. 1935; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957; amd. Sec. 1, Ch. 343, L. 1975; amd. Sec. 8, Ch. 439, L. 1975; R.C.M. 1947, 25-226(part).

Part 22

County Jails

7-32-2201. County jail required. (1) A jail shall be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the commissioners of two or more counties it is necessary or desirable to build, provide, or utilize a common jail, they may do so in any city or town located within one of the counties so concerned. Such common jail shall be built or provided and kept in good repair at the expense of the counties concerned on a basis as the commissioners of the counties shall agree.

(2) The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated. In the case of more than one county utilizing a common jail as provided in subsection (1), such jail shall be kept by the sheriffs of the counties utilizing the common jail on a basis as the sheriffs shall agree.

(3) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a jail to be erected, furnished, and maintained.

History: **(1)En. 16-2802.1 by Sec. 1, Ch. 193, L. 1973; Sec. 16-2802.1, R.C.M. 1947; (2)En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R.C.M. 1921; Cal. Pen. C. Sec. 1597; re-en. Sec. 12468, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1973; Sec. 16-2803, R.C.M 1947; (3)En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; Sec. 16-1008A, R.C.M. 1947; R.C.M. 1947, 16-1008A(part), 16-2802.1, 16-2803(part).**

7-32-2202. Use of jail in contiguous county. (1) When there is no jail in the county or when the jail becomes unfit or unsafe for the confinement of prisoners, the district judge may, by written appointment filed with the clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county (or any of them) and may at any time modify or annul the appointment.

(2) A copy of the appointment, certified by the clerk, must be served on the sheriff or keeper of the designated jail, who must receive into his jail all prisoners authorized to be confined therein pursuant to this section and who is responsible for the safekeeping of the persons so committed in the same manner and to the same extent as if he were sheriff of the county for whose use his jail is designated. With respect to the persons so committed, he is deemed the sheriff of the county from which they were removed.

(3) When a jail is erected in the county for the use of which the designation was made or its jail is rendered fit and safe for the confinement of prisoners, the district judge of that county must, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased and that it is revoked.

(4) The clerk must immediately serve a copy of the revocation upon the sheriff of the county, who must thereupon remove the prisoners to the jail from which the removal was had.

History: **En. Secs. 3028, 3029, 3030, 3031, Pen. C. 1895; re-en. Secs. 9765, 9766, 9767, 9768, Rev. C. 1907; re-en. Secs. 12474, 12475, 12476, 12477, R.C.M. 1921; Cal. Pen. C. Secs. 1603, 1604, 1605, 1606; re-en. Secs. 12474, 12475, 12476, 12477, R.C.M. 1935; R.C.M. 1947, 16-2810, 16-2811, 16-2812, 16-2813.**

7-32-2203. Purpose of county jail. The common jails are used as follows:

(1) for the detention of persons committed in order to secure their attendance as witnesses in criminal cases;

(2) for the detention of persons charged with crime and committed for trial;

(3) for the confinement of persons committed for contempt or upon civil process or by other authority of law;

(4) for the confinement of persons sentenced to imprisonment therein upon conviction of a crime.

History: En. Sec. 3022, Pen. C. 1895; re-en. Sec. 9759, Rev. C. 1907; re-en. Sec. 12468, R.C.M. 1921; Cal. Pen. C. Sec. 1597; re-en. Sec. 12468, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1973; R.C.M. 1947, 16-2803(part).

7-32-2204. Maintenance of county jail. The county commissioners have the care of building, inspecting, and repairing the jail and:

(1) must, once every 3 months, inquire into its state, as respects the security thereof, and the treatment and condition of prisoners; and

(2) must take all necessary precautions against escape, sickness, or infection.

History: En. Sec. 3040, Pen. C. 1895; re-en. Sec. 9777, Rev. C. 1907; re-en. Sec. 12486, R.C.M. 1921; re-en. Sec. 12486, R.C.M. 1935; R.C.M. 1947, 16-2822.

7-32-2205. Confinement of prisoners. The sheriff must receive all persons committed to jail by competent authority and provide them with necessary food, clothing, and bedding, for which he shall submit claims for the actual expenses incurred to the board of county commissioners for their determination and, except as provided in 7-32-2207, to be paid out of the county treasury.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; R.C.M. 1947, 16-2818(part).

7-32-2206. Confinement of federal prisoners. (1) The sheriff must receive and keep in the county jail any prisoner committed thereto by process or order issued under the authority of the United States until he is discharged according to law, as if he had been committed under process issued under the authority of this state.

(2) Provision and agreement for the use of said jails and the support and subsistence of such federal prisoners shall first be made by the United States, through or by the proper officer or officers, with the board of county commissioners of the county wherein such prisoners are to be confined. Such agreement shall be in writing and contain a provision that the United States shall, upon claim presented for the county by its county clerk and recorder, pay into the county treasury of the county the sum of $10 per day for each and every prisoner held in the county jail upon order or commitment of the United States government or any department or officer thereof.

(3) A sheriff to whose custody a prisoner is committed as provided in this section is answerable for his safekeeping in the courts of the United States, according to the laws thereof.

History: (1)En. Sec. 1, Ch. 120, L. 1923; re-en. Sec. 12472.1, R.C.M. 1935; Sec. 16-2807, R.C.M. 1947; (2)En. Sec. 2, Ch. 120, L. 1923; amd. Sec. 1, Ch. 34, L. 1931; re-en. Sec. 12472.2, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1969; amd. Sec. 1, Ch. 420, L. 1971; Sec. 16-2808, R.C.M. 1947; (3)En. Sec. 3027, Pen. C. 1895; re-en. Sec. 9764, Rev. C. 1907; re-en. Sec. 12473, R.C.M. 1921; Cal. Pen. C. Sec. 1602; re-en. Sec. 12473, R.C.M. 1935; Sec. 16-2809, R.C.M. 1947; R.C.M. 1947, 16-2807, 16-2808, 16-2809; amd. Sec. 1, Ch. 671, L. 1979.

7-32-2207. Confinement of persons on civil process. (1) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party thereto, the sheriff is not bound to receive such person unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding or to detain such person any longer than these expenses are provided for.

(2) This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

History: En. Sec. 3037, Pen. C. 1895; re-en. Sec. 9774, Rev. C. 1907; re-en. Sec. 12483, R.C.M. 1921; Cal. Pen. C. Sec. 1612; re-en. Sec. 12483, R.C.M. 1935; R.C.M. 1947, 16-2819.

7-32-2208. Actual confinement of prisoners required. A prisoner committed to the county jail for trial, for examination, or upon conviction for a public offense must be actually confined in the jail until he is legally discharged. If he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.

History: En. Sec. 3025, Pen. C. 1895; re-en. Sec. 9762, Rev. C. 1907; re-en. Sec. 12471, R.C.M. 1921; Cal. Pen. C. Sec. 1600; re-en. Sec. 12471, R.C.M. 1935; R.C.M. 1947, 16-2806.

7-32-2209. Expenses of persons committed to jail by highway patrol bureau. In the event a person is committed to jail by the highway patrol bureau, department of justice, the state of Montana shall, upon claim presented for the county by the clerk and recorder, pay into the county treasury of the county the sum of $10 per day for each and every prisoner held in the county jail upon order or commitment of the highway patrol bureau or any department or officer thereof. For the purposes of this section, a day shall be defined as a 24-hour period or portion thereof, beginning with the time of incarceration. Such claims upon the highway patrol bureau, department of justice, shall be paid to the various counties out of funds appropriated for that purpose.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; R.C.M. 1947, 16-2818(part); amd. Sec. 2, Ch. 671, L. 1979.

7-32-2210. Employment of temporary guards. When necessary the sheriff may, with the assent in writing of the district judge, employ a temporary guard for the protection of the county jail or for the safekeeping of prisoners, the expenses of which are a county charge.

History: En. Sec. 3035, Pen. C. 1895; re-en. Sec. 9772, Rev. C. 1907; re-en. Sec. 12481, R.C.M. 1921; Cal. Pen. C. Sec. 1610; re-en. Sec. 12481, R.C.M. 1935; R.C.M. 1947, 16-2817.

7-32-2211. Service of papers upon jailer for prisoner. A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For neglect to do so, he is liable to the prisoner for all damages occasioned thereby.

History: En. Sec. 3034, Pen. C. 1895; re-en. Sec. 9771, Rev. C. 1907; re-en. Sec. 12480, R.C.M. 1921; Cal. Pen. C. Sec. 1609; re-en. Sec. 12480, R.C.M. 1935; R.C.M. 1947, 16-2816.

7-32-2212. Sheriff to prepare list of prisoners. The sheriff of each county must, on the first Monday in January and every 3 months thereafter, return to the county commissioners a certified list of the names of all prisoners in his custody on the last day of the preceding month, with the time and cause of their confinement, the length of time for which they were committed, and the number received and discharged during the preceding 3 months. In case he fails to do so, the sheriff must not receive any compensation for the sustenance of the prisoners in his custody.

History: En. Sec. 3041, Pen. C. 1895; re-en. Sec. 9778, Rev. C. 1907; re-en. Sec. 12487, R.C.M. 1921; re-en. Sec. 12487, R.C.M. 1935; R.C.M. 1947, 16-2823.

7-32-2213. Work hours for jailers in certain counties. Eight hours shall constitute a day's work for jailers in counties of the first, second, and third classes except in cases of emergency and when the peace and safety of the community require that such jailers work for a longer period than 8 hours in any 24.

History: En. Sec. 1, Ch. 93, L. 1909; re-en. Sec. 3070, R.C.M. 1921; re-en. Sec. 3070, R.C.M. 1935; R.C.M. 1947, 41-1106.

7-32-2214 through 7-32-2220 reserved.

7-32-2221. Segregation of prisoners. (1) Each county jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

(a) persons committed on criminal process and detained for trial;

(b) persons already convicted of crime and held under sentence;

(c) persons detained as witnesses or held under civil process or under an order imposing punishment for a contempt.

(2) Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process must not be kept or put into the same room, nor shall male and female prisoners (except husband and wife) be kept or put into the same room.

History: En. Secs. 3023, 3024, Pen. C. 1895; re-en. Secs. 9760, 9761, Rev. C. 1907; re-en. Secs. 12469, 12470, R.C.M. 1921; Cal. Pen. C. Secs. 1598, 1599; re-en. Secs. 12469, 12470, R.C.M. 1935; R.C.M. 1947, 16-2804, 16-2805.

7-32-2222. Health and safety of prisoners. (1) When a county jail or building contiguous to it is on fire and there is reason to believe that the prisoners may be injured or endangered, the sheriff or jailer must remove them to a safe and convenient place and there confine them as long as it may be necessary to avoid the danger.

(2) When a pestilence or contagious disease breaks out in or near a jail and the physician thereof certifies that it is likely to endanger the health of the prisoners, the district judge may by a written appointment designate a safe and convenient place in the county or the jail in a contiguous county as the place of their confinement. The appointment must be filed in the office of the clerk and authorize the sheriff to remove the prisoners to the designated place or jail and there confine them until they can be safely returned to the jail from which they were taken.

(3) If in the opinion of the sheriff any prisoner, while detained, requires medication, medical services, or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is

detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.

History: (1)En. Sec. 3032, Pen. C. 1895; re-en. Sec. 9769, Rev. C. 1907; re-en. Sec. 12478, R.C.M. 1921; Cal. Pen. C. Sec. 1607; re-en. Sec. 12478, R.C.M. 1935; Sec. 16-2814, R.C.M. 1947; (2)En. Sec. 3033, Pen. C. 1895; re-en. Sec. 9770, Rev. C. 1907; re-en. Sec. 12479, R.C.M. 1921; Cal. Pen. C. Sec. 1608; re-en. Sec. 12479, R.C.M. 1935; Sec. 16-2815, R.C.M. 1947; (3)En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R.C.M. 1921; Cal. Pen. C. Sec. 1611; re-en. Sec. 12482, R.C.M. 1935; amd. Sec. 1, Ch. 179, L. 1965; amd. Sec. 1, Ch. 203, L. 1967; amd. Sec. 2, Ch. 420, L. 1971; amd. Sec. 1, Ch. 435, L. 1973; Sec. 16-2818, R.C.M. 1947; R.C.M. 1947, 16-2814, 16-2815, 16-2818(part).

7-32-2223. Labor by prisoners. (1) Persons confined in the county jail under a judgment of imprisonment rendered in a criminal action or proceeding may be required by the board of county commissioners to perform labor on the public works or ways in the county.

(2) The board making such order may prescribe and enforce the rules under which such labor is to be performed.

History: En. Secs. 3038, 3039, Pen. C. 1895; re-en. Secs. 9775, 9776, Rev. C. 1907; re-en. Secs. 12484, 12485, R.C.M. 1921; Cal. Pen. C. Secs. 1613, 1614; re-en. Secs. 12484, 12485, R.C.M. 1935; R.C.M. 1947, 16-2820, 16-2821.

Part 23

Powers of County Commissioners Related to Law Enforcement

7-32-2301. Rewards for apprehension of criminals. (1) The board of county commissioners of each county has the power to offer rewards for the apprehension and conviction of any person or persons who have committed any felony within their respective counties. Said reward shall not exceed the sum of $500 for the apprehension and conviction of the party or parties guilty of a felony, and the reward shall not be paid in any case until a conviction has first been had in said case. All rewards shall be paid by warrants drawn on the general fund of the county.

(2) In no case shall the members of the board, sheriff, or other county officer receiving an annual or monthly salary be entitled to any part of any such reward.

History: En. Sec. 1, Ch. 61, L. 1909; re-en. Sec. 4483, R.C.M. 1921; re-en. Sec. 4483, R.C.M. 1935; R.C.M. 1947, 16-1123.

7-32-2302. Establishment of curfew. (1) The boards of county commissioners of the respective counties shall have:

(a) power to establish, by general order and from time to time, a curfew hour after which minors will not be allowed abroad on the public streets within the confines of unincorporated cities and towns of any such county; and

(b) authority to make all proper and necessary administrative rules for the purpose of carrying into effect the provisions of this section.

(2) The enforcement of the provisions of this section is enjoined upon every officer and official whose duty it is to enforce the laws of the state.

(3) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $10.

History: (1)En. Sec. 1, Ch. 29, L. 1969; Sec. 16-1182, R.C.M. 1947; (2)En. Sec. 2, Ch. 29, L. 1969; Sec. 16-1183, R.C.M. 1947; (3)En. Sec. 3, Ch. 29, L. 1969; Sec. 16-1184, R.C.M. 1947; R.C.M. 16-1182, 16-1183, 16-1184.

Parts 24 through 40 reserved

Part 41

Municipal Police Force

7-32-4101. Police department authorized and required. There shall be in every city and town of this state a police department which shall be organized, managed, and controlled as provided in this part.

History: En. Sec. 1, Ch. 136, L. 1907; Sec. 3304, Rev. C. 1907; re-en. Sec. 5095, R.C.M. 1921; re-en. Sec. 5095, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1947; amd. Sec. 1, Ch. 72, L. 1949; R.C.M. 1947, 11-1801(part).

7-32-4102. Applicability of part. (1) This part shall in all respects be applicable to and shall govern and control police departments in every such city or town organized under any form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3 and amendments thereto.

(2) Where the provisions of this part do conflict with the provisions of said part 42 and the amendments thereto pertaining to the commission form of government, the provisions pertaining to the commission form of government shall prevail.

History: En. Sec. 1, Ch. 136, L. 1907; Sec. 3304, Rev. C. 1907; re-en. Sec. 5095, R.C.M. 1921; re-en. Sec. 5095, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1947; amd. Sec. 1, Ch. 72, L. 1949; R.C.M. 1947, 11-1801(part).

7-32-4103. Supervision of police department. In all cities and towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall have charge of and supervision over the police department thereof. He shall appoint all the members and officers thereof. Subject to the provisions of this part, he shall have the power to suspend or remove any member or officer of the force. He shall make rules, not inconsistent with the provisions of this part, the other laws of the state, or the ordinances of the city or town council, for the government, direction, management, and discipline of the police force.

History: En. Sec. 2, Ch. 136, L. 1907; Sec. 3305, Rev. C. 1907; re-en. Sec. 5096, R.C.M. 1921; re-en. Sec. 5096, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1947; R.C.M. 1947, 11-1802.

7-32-4104. Additional regulations by city council. In addition to the provisions herein contained, the city or town council may make any ordinances, not inconsistent with this part or any law of the state, for the government of the police department and for regulating the powers and duties of its officers and members.

History: En. Sec. 11, Ch. 136, L. 1907; Sec. 3314, Rev. C. 1907; re-en. Sec. 5105, R.C.M. 1921; re-en. Sec. 5105, R.C.M. 1935; R.C.M. 1947, 11-1813.

7-32-4105. Duties of chief of police. (1) It is the duty of the chief of police:

(a) to execute and return all process issued by the city judge or directed to him by any legal authority and to attend upon the city court regularly;

(b) to arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial;

(c) to have charge and control of all policemen, subject to such rules as may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of policemen for action of the council;

(d) to perform such other duties as the council may prescribe.

(2) The chief of police has the same powers as a constable in the discharge of his duties, but he must not serve a process in any civil action or proceeding except when a city or town is a party.

History: En. Sec. 4785, Pol. C. 1895; re-en. Sec. 3254, Rev. C. 1907; re-en. Sec. 5037, R.C.M. 1921; re-en. Sec. 5037, R.C.M. 1935; R.C.M. 1947, 11-810.

7-32-4106. List of active and eligible policemen. (1) The city council shall have absolute and exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, to reduce the number of the police force at any time, and to divide the police membership into two lists:

(a) one an active list, who are to be actually employed and receive pay while so employed; and

(b) one an eligible list, who shall not receive pay while not actually employed as an officer or member.

(2) Officers or members of the active list temporarily relieved from duty shall become members of the eligible list without pay and shall be first entitled to reinstatement on the active list in case of vacancy, according to their seniority in the service, and all others on the eligible list shall be entitled to fill a vacancy in the order of their appointment.

(3) Such action of the council shall not be subject to review by any court.

(4) In no event shall there be any officers or members placed on the eligible list, except in case of temporary reduction of the police force, when the number already on the eligible list shall equal in number 20% of the active list.

History: En. Sec. 7, Ch. 136, L. 1907; Sec. 3310, Rev. C. 1907; re-en. Sec. 5101, R.C.M. 1921; amd. Sec. 5, Ch. 119, L. 1923; re-en. Sec. 5101, R.C.M. 1935; R.C.M. 1947, 11-1807.

7-32-4107. Utilization of retired officers. Policemen or officers on the retired list of any city or town of this state shall retire from the active list of police officers of such city or town but shall be subject to call for police service or active duty whenever an emergency shall require or the active list be temporarily insufficient for proper policing of such city or town, all under the rules as the board of police commissioners or city council shall prescribe.

History: En. Sec. 3, Ch. 100, L. 1927; amd. Sec. 3, Ch. 120, L. 1929; re-en. Sec. 5108.3, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; amd. Sec. 6, Ch. 85, L. 1977; R.C.M. 1947, 11-1819.

7-32-4108. Appointment to police force. All appointments to the police force must be appointed by the mayor, or the manager in those cities operating under the commission-manager plan, and confirmed by the city council or commission. No such appointment must be made until:

(1) an application for such position on the police force has been filed with the mayor, or the manager in those cities operating under the commission-manager plan, and referred by him to the police commission, where such commission exists; and

(2) such applicant has successfully passed the examination required to be held by such police commission and a certificate from such police commission that the applicant has qualified for such appointment has been filed with the mayor, or the manager in those cities operating under the commission-manager plan.

History: **En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R.C.M. 1921; amd. Sec. 2, Ch. 119, L. 1923; re-en. Sec. 5097, R.C.M. 1935; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973; R.C.M. 1947, 11-1803(part).**

7-32-4109. Temporary employment for persons doing police work. The mayor of any city shall have the power and authority, at any time when he deems it expedient, to employ not to exceed two persons at one time for a period not to exceed 30 days to do police duty who are not members of the police department.

History: **En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).**

7-32-4110. Procedure for reinstatement on police force. (1) An applicant for a position on the police force who has already served 20 years or more in the aggregate on the police force of the city or town to which he is applying for reinstatement may make application within 1 year from the date on which his name was removed from the active list of police officers to the police commission of that city or town wherein he last served, and his application must be considered by said police commission within 30 days after receipt of said application.

(2) Said commission shall not require the applicant to have a physical examination or other examination required of applicants for a position on the police force; and in the event that the police commission recommends the reinstatement of said applicant as a member of the police force, the probationary term required of applicants for positions shall be dispensed with as to such applicant for reinstatement. It shall be the duty of the mayor to submit to the city council of said city at its next regular meeting the recommendation of the police commission; and in the event that a majority of the city council vote in favor of adopting the recommendation of the commission, said applicant shall be immediately reinstated as a police officer in said city or town.

History: **En. Sec. 1, Ch. 205, L. 1939; R.C.M. 1947, 11-1808.**

7-32-4111. Examination of applicants for position on police force. (1) All applicants for positions on the police force whose applications shall have been referred to the police commission shall be required to successfully undergo an examination before the police commission and to receive a certificate from said commission that the applicant is qualified for such appointment for the probationary period upon the police force.

(2) Any applicant who shall make any false statement to the police commission as to his age or other required qualifications at his examination before the police commission shall be subject to suspension or dismissal from the police force after trial.

History: En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R.C.M. 1921; amd. Sec. 3, Ch. 119, L. 1923; re-en. Sec. 5099, R.C.M. 1935; R.C.M. 1947, 11-1805(part).

7-32-4112. Qualifications of policemen. (1) The members of the police department on the active list of any city at the time of their appointment under this part may not be less than 18 years of age or more than 35 years of age, but this restriction does not apply to any member of any police department as of July 2, 1973, to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of service is not less than 3 months, or to applicants for reinstatement under 7-32-4110.

(2) A police officer must be a citizen of the United States and meet the minimum qualifying standards for employment promulgated by the board of crime control.

History: (1)En. Sec. 1, Ch. 100, L. 1927; amd. Sec. 1, Ch. 16, L. 1929; amd. Sec. 1, Ch. 120, L. 1929; re-en. Sec. 5108.1, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1947; amd. Sec. 12, Ch. 94, L. 1973; Sec. 11-1817, R.C.M. 1947; (2)En. Sec. 12, Ch. 136, L. 1907; Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R.C.M. 1921; amd. Sec. 6, Ch. 119, L. 1923; re-en. Sec. 5106, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1959; amd. Sec. 1, Ch. 47, L. 1971; amd. Sec. 1, Ch. 66, L. 1971; amd. Sec. 1, Ch. 56, L. 1973; amd. Sec. 1, Ch. 60, L. 1973; amd. Sec. 12, Ch. 335, L. 1974; Sec. 11-1814, R.C.M. 1947; R.C.M. 1947, 11-1814, 11-1817; amd. Sec. 8, Ch. 263, L. 1979.

7-32-4113. Probationary period and confirmation of appointment. (1) Every applicant who has passed the examination and received the certificate referred to in 7-32-4108 must first serve for a probationary term of not more than 1 year. At any time before the end of such probationary term, the mayor, or the manager in those cities operating under the commission-manager plan, may revoke such appointment.

(2) After the end of such probationary period and within 30 days thereafter, the appointment of such applicant must be submitted to the city council or commission, and if such appointment is confirmed by the city council or commission, such applicant becomes a member of the police force and shall hold such position during good behavior unless suspended or discharged as provided by law.

History: En. Sec. 3, Ch. 136, L. 1907; Sec. 3306, Rev. C. 1907; amd. Sec. 1, Ch. 198, L. 1921; re-en. Sec. 5097, R.C.M. 1921; amd. Sec. 2, Ch. 119, L. 1923; re-en. Sec. 5097, R.C.M. 1935; amd. Sec. 3, Ch. 152, L. 1947; amd. Sec. 1, Ch. 160, L. 1973; R.C.M. 1947, 11-1803(part).

7-32-4114. Restrictions on activities of policemen. (1) No member of the police force may hold any other office or be employed in any other department of the city or town government.

(2) The fact that a person is an officer or member of the police department does not deprive his spouse or any member of his family of the right to participate in political activity or to hold public or political office.

(3) An officer or member of the police department may participate in political activity provided he does not do so while on duty or in uniform or that it does not otherwise interfere with the performance of his duties.

History: En. Secs. 8, 9, 10, Ch. 136, L. 1907; Secs. 3311, 3312, 3313, Rev. C. 1907; re-en. Secs. 5102, 5103, 5104, R.C.M. 1921; re-en. Secs. 5102, 5103, 5104, R.C.M. 1935; R.C.M. 1947, 11-1810(part), 11-1811, 11-1812; amd. Sec. 1, Ch. 385, L. 1981.

Compiler's Comments

1981 Amendment: Changed "shall" to "may" in (1); deleted former subsections (2) and (3) relating to restrictions on political activities of policemen; added subsections (2) and (3).

7-32-4115. Exemptions of members of police force. No member of the police force shall be liable to military or jury duty or to arrest on civil process while actually on duty.

History: En. Sec. 8, Ch. 136, L. 1907; Sec. 3311, Rev. C. 1907; re-en. Sec. 5102, R.C.M. 1921; re-en. Sec. 5102, R.C.M. 1935; R.C.M. 1947, 11-1810(part).

7-32-4116. Minimum wage of police in first- and second-class cities. (1) Each duly confirmed member of a police department of cities of the first and second class of Montana is entitled to a minimum wage for a daily service of 8 hours' work of at least $750 per month for the first year of service and thereafter at least $750 a month plus 1% of the minimum base monthly salary of $750 for each additional year of service up to and including the 20th year of additional service.

(2) This section applies to cities and towns not of the first class which have elected to come under the provisions of Chapter 120, Laws of 1929, as amended, or Chapter 335, Laws of 1974, as amended.

(3) Added salary for years of service will be based on the base monthly salary as established in this section and not on the actual current salary.

History: (1)En. Sec. 1, Ch. 55, L. 1935; re-en. Sec. 5108.16, R.C.M. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957; amd. Sec. 1, Ch. 266, L. 1967; amd. Sec. 1, Ch. 298, L. 1969; amd. Sec. 1, Ch. 314, L. 1973; amd. Sec. 2, Ch. 438, L. 1975; Sec. 11-1832, R.C.M. 1947; (2)En. Sec. 2, Ch. 55, L. 1935; re-en. Sec. 5108.17, R.C.M. 1935; Sec. 11-1833, R.C.M. 1947; (3)En. Sec. 2, Ch. 266, L. 1967; Sec. 11-1832.1, R.C.M. 1947; R.C.M. 1947, 11-1832, 11-1832.1, 11-1833; amd. Sec. 9, Ch. 263, L. 1979; amd. Sec. 35, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "section" for "[act]" in (3).

7-32-4117. Group insurance for policemen — funding. (1) Cities of all classes, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective policemen;

(b) notwithstanding Title 2, chapter 18, part 7, pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for policemen and their dependents;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) In compliance with 1-2-112, the administration of this section is declared a public purpose of a city, which may be paid out of the general

fund of the governing body and financed by a levy not to exceed 2 mills on the taxable value of property within the city or town.

History: En. 11-1024.3, 11-1024.4 by Secs. 1, 2, Ch. 308, L. 1975; R.C.M. 1947, 11-1024.3, 11-1024.4; amd. Sec. 1, Ch. 88, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the requirement that cities are to pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for policemen and their dependents for the requirement that cities pay 100% of the premium for insurance coverage for each policeman and his dependents in (1)(b); added subsection (1)(c).

Interim Study Committee Bill: Chapter 88, L. 1981 (HB 3), was introduced at the request of the interim Study Committee on State Mandates and the Effects of State-Owned Property on Local Governments. See committee report, Legislative Council, 1980.

7-32-4118. Days off duty without loss of compensation. Each member of the police force in every city of the first and second class shall be given 2 days off duty in each 7-day period without loss of compensation.

History: En. Sec. 1, Ch. 53, L. 1931; re-en. Sec. 5108.15, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1957; R.C.M. 1947, 11-1831.

7-32-4119. Overtime compensation. Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to compensation for overtime as provided under 39-3-405.

History: En. 11-1832.2 by Sec. 1, Ch. 333, L. 1973; R.C.M. 1947, 11-1832.2.

7-32-4120. Expenditure of state payments by municipality not having police retirement system — annual report. (1) Any city or town not governed by the provisions of chapter 9 or 10 of Title 19 shall only expend the payment received pursuant to 19-10-305 for police training or to purchase pensions for members of its police department.

(2) The city treasurer or town clerk of such cities or towns shall, on or before April 1 of each year, report to the state auditor as to the expenditures of all funds received pursuant to 19-10-305.

History: En. Sec. 4, Ch. 261, L. 1965; R.C.M. 1947, 11-1837; amd. Sec. 36, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "chapter 9 or 10 of Title 19" for "the police retirement system law" in (1).

7-32-4121. Action to recover salary. (1) Actions to recover salaries by members of the police departments of cities must be commenced within 6 months after the cause of action shall have accrued.

(2) No action for unpaid salary can be maintained by members of the police department of cities except for service actually rendered and, if suspended or placed on the eligible list, then only for the days the member of the police department reports for duty.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

History: (1)En. Sec. 1, Ch. 11, Ex. L. 1919; re-en. Sec. 9036, R.C.M. 1921; re-en. Sec. 9036, R.C.M. 1935; Sec. 93-2610, R.C.M. 1947; (2)En. Sec. 2, Ch. 11, Ex. L. 1919; re-en. Sec. 9037, R.C.M. 1921; re-en. Sec. 9037, R.C.M. 1935; Sec. 93-2611, R.C.M. 1947; (3)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 93-2610, 93-2611, 93-2720.

7-32-4122 through 7-32-4130 reserved.

7-32-4131. Compensation and allowance for sick or injured policemen. Whenever any member of a police department in any city or town shall, on account of sickness or disability suffered or sustained while a member of such police department and not caused or brought on by dissipation or abuse, be confined to any hospital or his home and shall require medical attention and care, the officer of such police department may be allowed, by the city council, his salary as such police officer during his absence and an amount equal to his expenses while confined for such injury or sickness.

History: **En. Sec. 6, Ch. 100, L. 1927; amd. Sec. 6, Ch. 120, L. 1929; re-en. Sec. 5108.6, R.C.M. 1935; R.C.M. 1947, 11-1822.**

7-32-4132. Payment of partial salary amount of officer injured in performance of duty. A member of a municipal law enforcement agency of a first- or second-class municipality who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties shall be paid by the municipality by which he is employed the difference between his full salary and the amount he receives from workers' compensation until his disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever shall first occur.

History: **En. 11-1822.1 by Sec. 1, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.1; amd. Sec. 1, Ch. 290, L. 1979.**

7-32-4133. Repealed. Sec. 5, Ch. 290, L. 1979.

History: **En. 11-1822.2 by Sec. 2, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.2.**

7-32-4134. Repealed. Sec. 5, Ch. 290, L. 1979.

History: **En. 11-1822.3 by Sec. 3, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.3.**

7-32-4135. Discontinuation of salary when retirement allowance granted. Payment of a partial salary amount under 7-32-4132 shall be discontinued if the officer is disabled for an undetermined duration and is granted a disability retirement allowance under Title 19, chapters 9 and 10. If an application for such a retirement allowance is not made by the officer, application therefor may be made by the chief executive officer of the municipality by which such officer is employed.

History: **En. 11-1822.4 by Sec. 4, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.4; amd. Sec. 2, Ch. 290, L. 1979.**

7-32-4136. Assignment to light duty or another agency. (1) Whenever, in the opinion of the municipality, supported by a physician's opinion, the officer is able to perform specified types of light police duty, payment of his partial salary amount under 7-32-4132 shall be discontinued if he refuses to perform such light police duty when it is available and offered to him. Such light duty shall be consistent with the officer's status as a law enforcement officer.

(2) With his consent, the officer may be transferred to another department or agency within the municipality.

History: **En. 11-1822.5 by Sec. 5, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.5; amd. Sec. 3, Ch. 290, L. 1979.**

7-32-4137. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

History: En. 11-1822.6 by Sec. 6, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.6.

7-32-4138. Subrogation. The municipality has a cause of action for reimbursement of sums it has paid to an officer as salary and for medical treatment against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the municipality.

History: En. 11-1822.7 by Sec. 7, Ch. 451, L. 1977; R.C.M. 1947, 11-1822.7.

7-32-4139 through 7-32-4150 reserved.

7-32-4151. Police commission required in all cities and some towns. (1) In all cities and some towns, the mayor, or the manager in those cities operating under the commission-manager plan, shall nominate and, with the consent of the city council or commission, appoint three residents of such city or town who shall have the qualifications required by law to hold a municipal office therein and who shall constitute a board to be known by the name of "police commission".

(2) This section shall apply to organized police departments in every city and town of the state which have three or more full-time law enforcement officials, regardless of the form of government under which said city or town may be operating or may at any time adopt.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part).

7-32-4152. Term and compensation of members of police commission. (1) The appointees to the police commission shall hold office for 3 years, and one such member must be appointed annually at the first regular meeting of the city council or commission in May of each year. However, a member serving on the commission during the hearing or deciding of a case under 7-32-4155 shall continue to serve on the commission for that case until a decision has been made; a new member may not sit on the commission for such business.

(2) The compensation of the members of such board shall be fixed by the city council or commission, not to exceed $10 per day or more than $50 per month for any month for each member in cities of the first and second class.

History: En. Sec. 4, Ch. 136, L. 1907; Sec. 3307, Rev. C. 1907; re-en. Sec. 5098, R.C.M. 1921; amd. Sec. 1, Ch. 119, L. 1923; re-en. Sec. 5098, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1939; amd. Secs. 4, 5, Ch. 152, L. 1947; amd. Sec. 1, Ch. 194, L. 1975; R.C.M. 1947, 11-1804(part); amd. Sec. 1, Ch. 453, L. 1979.

7-32-4153. Meaning of word mayor. Wherever the word "mayor" is used in 7-32-4109 and 7-32-4155 through 7-32-4163, it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(11).

7-32-4154. Role of police commission in examination of applicants for police force. It shall be the duty of the police commission to examine all applicants whose applications have been referred to the commission as to their age, legal, mental, moral, and physical qualifications and their ability to fill the office as a member of the police force. It shall also be the duty of the police commission, subject to the approval of the mayor, to make such rules regarding such examinations not inconsistent with this part or the laws of the state.

History: En. Sec. 5, Ch. 136, L. 1907; Sec. 3308, Rev. C. 1907; amd. Sec. 2, Ch. 198, L. 1921; re-en. Sec. 5099, R.C.M. 1921; amd. Sec. 3, Ch. 119, L. 1923; re-en. Sec. 5099, R.C.M. 1935; R.C.M. 1947, 11-1805(part).

7-32-4155. Role of police commission in hearing and deciding charges against policemen. (1) The police commission shall have the jurisdiction and it shall be its duty to hear, try, and decide all charges brought by any person or persons against any member or officer of the police department, including any charge that such member or officer:

(a) is incompetent or has become incapacitated, by age, disease, or otherwise, to discharge the duties of his office;

(b) has been guilty of neglect of duty, of misconduct in his office, or of conduct unbecoming a police officer;

(c) has been found guilty of any crime; or

(d) whose conduct has been such as to bring reproach upon the police force.

(2) It is the duty of the police commission, at the time set for hearing a charge against a police officer, to forthwith proceed to hear, try, and determine the charge according to the rules of evidence applicable to courts of record in the state.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

7-32-4156. Charges to be in writing. Any charge brought against any member of the police force must be in writing in the form required by the police commission, and a copy thereof must be served upon the accused officer or member at least 15 days before the time fixed for the hearing of such charge.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(2).

7-32-4157. Rights of accused policeman. The accused shall have the right to be present at the trial in person and by counsel and to be heard and to give and furnish evidence in his defense.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

7-32-4158. Police commission trials open to public. All trials shall be open to the public.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

7-32-4159. Subpoena authority of police commission. The chairman or acting chairman of the police commission shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses at the hearing, and any person duly served with a subpoena is bound to attend in obedience thereto. The police commission shall have the same authority to enforce obedience to the subpoena and to punish the disobedience thereof as is possessed by a judge of the district court in like cases; provided, however, that punishment for disobedience is subject to review by the district court of the proper county.

History: **En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(4).**

7-32-4160. Decision by police commission — veto power of mayor. (1) The police commission must, after the conclusion of the hearing or trial, decide whether the charge was proven or not proven and shall have the power, by a decision of a majority of the commission, to discipline, suspend, remove, or discharge any officer who shall have been found guilty of the charge filed against him.

(2) Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing and giving reasons therefor, which shall become a permanent record of the police commission; provided, however, that where and when the police commission decides the charge not proven, the decision is final and conclusive and is not subject to modification or veto by the mayor or to any review.

(3) Where the police commission decides the charge proven, the mayor, within 5 days from the date of the filing of such findings and decision with the city clerk, may modify or veto such findings and decision.

History: **En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(5), (6).**

7-32-4161. Enforcement of decision. When a charge against a member of the police force is found proven by the board and is not vetoed by the mayor, the mayor must make an order enforcing the decision of the board or the decision as modified if modified by the mayor. Such decision or order shall be subject to review by the district court of the proper county on all questions of fact and all questions of law.

History: **En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(7).**

7-32-4162. Hearing required prior to dismissal of policeman. In no case shall any officer or member of the police force be discharged without a hearing or trial before the police commission as provided in 7-32-4155 in all cities of the first class, all cities of the second class, any and all cities having a duly and regularly appointed, qualified, and acting police commission, and all cities and municipalities functioning under the commission form, city manager plan, or a mayor.

History: **En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(9).**

7-32-4163. Temporary suspensions. The mayor, or chief of police, subject to the approval of the mayor, shall have the power in all cases to suspend a policeman or any officer for a period of not exceeding 10 days in any one month, such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(part).

7-32-4164. District court review. The district court of the proper county shall have jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force, but no suit to review such hearing or trial or for reinstatement to office shall be maintained unless the same is begun within a period of 60 days after the decision of the police commission or order of the mayor has been filed with the city clerk.

History: En. Sec. 6, Ch. 136, L. 1907; Sec. 3309, Rev. C. 1907; re-en. Sec. 5100, R.C.M. 1921; amd. Sec. 4, Ch. 119, L. 1923; re-en. Sec. 5100, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959; R.C.M. 1947, 11-1806(8).

Part 42

Municipal Jails

7-32-4201. Municipal jails authorized. The city or town council has power to establish and maintain a jail for the confinement of persons convicted of violating the ordinances of the city or town, to make rules for the government of the same, and to cause the prisoners to work on streets or elsewhere within 3 miles of the city.

History: En. Subd. 35, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.34, R.C.M. 1935; R.C.M. 1947, 11-937.

7-32-4202. Municipal workhouse authorized. The city or town council has power to erect and organize a workhouse in or near a city or town. Any person who fails or neglects to pay any fine or costs imposed on him by any ordinance may be committed to the workhouse until such fine is paid.

History: En. Subd. 53, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.52, R.C.M. 1935; R.C.M. 1947, 11-955.

7-32-4203. Use of county jail. The city or town council has power to use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law and with the consent of the board of county commissioners.

History: En. Subd. 52, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.51, R.C.M. 1935; R.C.M. 1947, 11-954.

Part 43

Powers of Municipal Council Related to Law Enforcement

7-32-4301. Regulations governing arrest authorized. The city or town council has power to make regulations authorizing the police of the city or town to make arrests of persons charged with crime:

(1) within the limits of the city or town;
(2) within 5 miles thereof; and
(3) along the line of water supply of the city or town.

History: En. Subd. 58, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.57, R.C.M. 1935; R.C.M. 1947, 11-960.

7-32-4302. Control of disturbances of the peace. Within the city or town and within 3 miles of the limits thereof, the city or town council has power to prevent and punish intoxication (subject to the limits established in 53-24-106), fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace or which are offensive to public morals.

History: En. Subd. 25, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.24, R.C.M. 1935; amd. Sec. 16, Ch. 302, L. 1974; amd. Sec. 1, Ch. 403, L. 1975; R.C.M. 1947, 11-927.

7-32-4303. Control of shoplifting. The city or town council may define shoplifting as provided in 46-6-501 and punish persons found guilty thereof.

History: En. 11-990 by Sec. 5, Ch. 274, L. 1974; R.C.M. 1947, 11-990; amd. Sec. 10, Ch. 263, L. 1979.

7-32-4304. Control of vagrancy and disorderly conduct. The city or town council has power to define vagrancy and to restrain and punish vagrants, mendicants, and persons guilty of disorderly conduct.

History: En. Subd. 34, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.33, R.C.M. 1935; R.C.M. 1947, 11-936.

7-32-4305. Control of firearms. The city or town council has power to prevent and suppress the sale of firearms and carrying of concealed weapons.

History: En. Subd. 55, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.54, R.C.M. 1935; R.C.M. 1947, 11-957(part).

7-32-4306 through 7-32-4310 reserved.

7-32-4311. Maintenance of police telegraph. The city or town council has power to maintain a police telegraph.

History: En. Subd. 27, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.26, R.C.M. 1935; R.C.M. 1947, 11-929(part).

CHAPTER 33

FIRE PROTECTION

Parts 1 through 20 reserved

Part 21 — Rural Fire Districts

Section
7-33-2101. Rural fire districts authorized — petition.
7-33-2102. Notice of hearing.
7-33-2103. Hearing on petition — decision.
7-33-2104. Operation of fire district.

7-33-2105. Powers and duties of trustees.
7-33-2106. Details relating to board of trustees of fire district.
7-33-2107. Contracts for fire protection services.
7-33-2108. Mutual aid agreements.
7-33-2109. Tax levy authorized.
7-33-2110. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation.
Sections 7-33-2111 through 7-33-2120 reserved.
7-33-2121. Division of fire district authorized.
7-33-2122. Petition for division — hearing and notice.
7-33-2123. Decision on petition for division — protest.
7-33-2124. Distribution of assets and liabilities following division.
7-33-2125. Annexation of adjacent territory not contained in a fire district.
7-33-2126. Annexation of adjacent territory contained in a fire district.
7-33-2127. Withdrawal by owner of individual tract adjacent to municipality.
7-33-2128. Dissolution of fire district.

Part 22 — Rural Fire Protection

7-33-2201. Authority of county governing body to protect range, farm, and forest resources.
7-33-2202. Functions of county governing body.
7-33-2203. County rural fire chief.
7-33-2204. District fire chief to serve without compensation.
7-33-2205. Establishment of fire season — permit requirements.
7-33-2206. Violations.
7-33-2207. Voluntary urban fire crews for use in rural areas.
7-33-2208. Fire control powers — liability.
7-33-2209. Finance of fire control activities.
7-33-2210. State to be reimbursed for forest fire suppression activities in noncooperating counties.

Part 23 — Fire Protection in Unincorporated Places

7-33-2301. Fire wardens.
7-33-2302. Removal of fire dangers — penalty.
Sections 7-33-2303 through 7-33-2310 reserved.
7-33-2311. Fire companies authorized.
7-33-2312. Organization of fire company.
7-33-2313. Duties of chief.
7-33-2314. Certain exemptions for firefighters.
7-33-2315. Certificate of membership in fire company.
7-33-2316. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation.

Parts 24 through 40 reserved

Part 41 — Municipal Fire Departments

7-33-4101. Fire department authorized and required.
7-33-4102. Applicability of part.
7-33-4103. Composition of fire department.
7-33-4104. Duties of chief and assistant chief of fire department.
7-33-4105. Appointment of chief engineer of fire department.
7-33-4106. Appointment of firefighters.
7-33-4107. Qualifications of firefighters.
7-33-4108. Physical examination.
7-33-4109. Supplementary volunteer fire department authorized for cities of second class.
7-33-4110. Volunteer companies not affected.
7-33-4111. Tax levy for volunteer fire departments.
7-33-4112. Mutual aid agreements.
7-33-4113. Personnel of fire department not considered municipal officers.
7-33-4114. Limitation on liability for delays by persons authorized to receive and transmit fire reports.

Sections 7-33-4115 through 7-33-4120 reserved.
7-33-4121. Rules governing employment in fire departments.
7-33-4122. Term of appointment of firefighters — probationary period.
7-33-4123. Authority to suspend firefighters.
7-33-4124. Suspension procedure.
7-33-4125. Reduction and subsequent increase in number of firefighters based on seniority.
7-33-4126. Hours of work of members of paid fire departments in cities of first or second class.
7-33-4127. Compensation of fire department personnel.
7-33-4128. Minimum wages of firefighters in cities of first and second class.
7-33-4129. Exceptions to certain overtime provisions.
7-33-4130. Group insurance for firefighters — funding.
7-33-4131. Firefighter's rights in event of city-county consolidation.
7-33-4132. Violation and penalty.

Part 42 — Powers of Municipal Council Related to Fire Services

7-33-4201. Establishment of fire department and fire alarm system.
7-33-4202. Provision for fire equipment.
7-33-4203. Authority to restrict building to protect against fire.
7-33-4204. Inspection and regulation of fire hazards.
7-33-4205. Regulation of explosives and inflammable material.
7-33-4206. Regulation of bonfires, fireworks, and other fire-causing agents.
7-33-4207. Regulation of industries with fire-causing potential.
7-33-4208. Adoption of fire code.

Parts 1 through 20 reserved

Part 21

Rural Fire Districts

7-33-2101. Rural fire districts authorized — petition. The board of county commissioners is authorized to establish fire districts in any unincorporated territory or town upon presentation of a petition in writing signed by the owners of 50% or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last-completed assessment roll.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2102. Notice of hearing. The board shall, within 10 days after the receipt of the petition, give notice of the hearing thereof at least 10 days prior to the hearing:

(1) by mailing a copy of the notice by first-class mail to each freeholder in the district at the address shown in the assessment roll;

(2) by causing notices of the time and place of such hearing to be posted in at least three of the most public places within the area proposed to be established as a fire district; and

(3) by publishing the notice at least once, not less than 10 or more than 20 days prior to the time of the hearing, in a newspaper regularly published in the county in which such proposed district is situated.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2103. Hearing on petition — decision. (1) The board shall proceed to hear the petition at the time set or at any time within 5 days thereafter to which the same is postponed or continued with due notice and may grant the same unless it is established thereat that the petition bears insufficient signatures as above required or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient.

(2) The board shall render its decision within 30 days after the hearing.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2104. Operation of fire districts. Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town, or village, said commissioners:

(1) may contract with a city, town, or private fire company to furnish fire protection for property within said district; or

(2) shall appoint five qualified trustees to govern and manage the affairs of the fire district.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part).

7-33-2105. Powers and duties of trustees. (1) The trustees shall prepare and adopt suitable bylaws.

(2) The trustees shall have the authority to provide adequate and standard firefighting apparatus, equipment, housing, and facilities for the protection of the district. They shall appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies.

(3) The trustees shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets shall, as far as applicable, apply to fire districts.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part).

7-33-2106. Details relating to board of trustees of fire district. (1) The five trustees initially appointed by the county commissioners shall hold office until their successors are elected and qualified as hereinafter provided.

(2) Trustees shall be elected as provided in subsection (3) of this section, 13-1-104(3), and 13-1-401. The term of office shall be 3 years beginning at the first district meeting following their election or until their successors are elected and qualified. Appointments to fill vacancies shall be made by the county governing body and appointees shall hold office until the next regular election. All electors, as defined in Title 13, who reside in the district are eligible to vote in the election, including any holder of title to lands within the district who presents a proof of interest in such land at the polling place, regardless of whether he is registered to vote.

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 30 days before the election day and signed by at least five electors of the district. If no nominations are made, the electors of the district shall write on the ballots the name or names of the persons for whom they desire to vote. This subsection does not prevent an elector from voting for any qualified person, although the name does not appear on the official ballot.

(4) The trustees shall organize by choosing a chairman and appointing one member to act as secretary.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part); amd. Sec. 1, Ch. 213, L. 1979; amd. Sec. 390, Ch. 571, L. 1979; amd. Sec. 1, Ch. 27, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "subsection (3) of this section" and "and 13-1-401" at the beginning of (2); substituted "district meeting" for "Monday in January" in second sentence of (2); deleted "Nominations for office shall be made as provided in 13-14-113.", formerly the fourth sentence of (2); added final phrase in (2) beginning with "including any holder . . ."; added subsection (3).

Transition: Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-33-2107. Contracts for fire protection services. (1) The trustees of such fire district, provided that the owners of 10% of the taxable value of the property in any such fire district may elect to make such a contract:

(a) may contract with the council of any city or town or with the trustees of any other fire district established in any unincorporated territory, town, or village which has any boundary line lying within 5 straight-line miles of any boundary line of such district, whether the city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by the city or town or by such other fire district to property included within such district; and

(b) may agree to pay a reasonable consideration therefor.

(2) Likewise, the trustees may contract to permit such fire district's equipment and facilities to be used by the cities, towns, or other fire districts which have any boundary lines lying within 5 straight-line miles of any boundary line of such district.

(3) Likewise, the trustees may enter into contracts with public or private parties under which such district fire company may extend fire protection to

public or private property lying outside of such district or any other district or city limits but within 5 straight-line miles of any boundary line of such district, whether such public or private property shall lie within the same county or another county. Such district fire company may use such fire district's equipment and facilities outside of such district in the performance of such contracts.

(4) All money received from such contracts shall be deposited in the county treasurer's office and credited to the fire district fund holding such contracts.

(5) The relationship between the fire district and the city, town, or private fire service shall be that of an independent contractor.

History: (1) thru (4)En. Sec. 1, Ch. 107; L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; Sec. 11-2010, R.C.M. 1947; (5)En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; Sec. 11-2008, R.C.M. 1947; R.C.M. 1947, 11-2008(part), 11-2010(c).

7-33-2108. Mutual aid agreements. (1) A mutual aid agreement is an agreement for protection against natural or manmade disasters.

(2) Fire district trustees may enter such agreements with the proper authority of:

(a) other fire districts;
(b) unincorporated municipalities;
(c) incorporated municipalities;
(d) state agencies which have fire-prevention services;
(e) private fire-prevention agencies;
(f) federal agencies.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(d).

7-33-2109. Tax levy authorized. At the time of the annual levy of taxes, the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of such city, town, or private fire service for the purpose of furnishing fire protection service to property within such district. Such tax must be collected as are other taxes.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2110. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) No right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan, or payments provided under 19-12-103 may be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

History: **En. Sec. 1, Ch. 193, L. 1979.**

Compiler's Comments

Preamble. The preamble to Chapter 193, L. 1979, reads as follows: "WHEREAS, confusion has arisen concerning the proper status of prior existing fire districts and fire companies following the formation of a city-county consolidated government with self-government powers; and

WHEREAS, the legislature wishes to clarify this situation with the clear understanding that the substance of the law is not changed; and

WHEREAS, Title 7, chapter 33, part 41, requires municipalities to provide fire services under that part; and

WHEREAS, and city-county consolidated government is neither a county government nor a municipality but under 7-3-1103 has the status of both; and

WHEREAS, this combined status allows the people of the local area to choose the most desirable means to provide local services, including fire services, within reasonable limits of interpreting applicable state law and so long as vested rights are not unreasonably abrogated; and

WHEREAS, the legislature finds that a local government charter that maintains rural fire services organizations as they were prior to consolidation is a reasonable interpretation of those laws; and

WHEREAS, to provide the desirable ratification of any existing charter interpretation to this effect and to clarify the application of such charters in the future.

THEREFORE, it is the purpose of this act to clarify the law on this point without establishing a presumption that the law is in any way substantively altered."

Effective date. Sec. 2, Ch. 193, L. 1979, provided: "This act is effective on its passage and approval." Approved March 21, 1979.

7-33-2111 through 7-33-2120 reserved.

7-33-2121. Division of fire district authorized. Fire districts may be divided as provided in 7-33-2122 through 7-33-2124.

History: **En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).**

7-33-2122. Petition for division — hearing and notice. (1) Whenever a petition in writing shall be made to the county commissioners, signed by the owners of 20% or more of the privately owned lands of an area proposed to be detracted from the original district who constitute 20% or more of the taxpayers who are freeholders within such proposed detracted area and whose names appear upon the last-completed assessment roll, the county commissioners shall, within 10 days from the receipt of such petition, give notice of the hearing of the petition by mailing a copy of the notice by first-class mail to each freeholder in the district at the address shown in the assessment roll and by causing a notice thereof to be posted, at least 10 days prior to the time appointed by them for the consideration of the petition, in at least three of the most public places within the proposed detracted area and also in at least three of the most public places within the remaining area.

(2) The petition for detraction shall describe the boundaries of the proposed detracted area and the boundaries of the remaining area.

(3) The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear the petition.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2123. Decision on petition for division — protest. The petition shall be granted and the original districts shall thereupon be divided into separate districts unless at the time of the hearing on such petition protests shall be presented by the owners of 50% or more of the area of the privately owned lands included within the entire original district who constitute a majority of the taxpayers who are freeholders of the entire original district and whose names appear upon the last-completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2124. Distribution of assets and liabilities following division. (1) Upon the division of districts, money on hand shall be apportioned between the divided areas according to their respective taxable valuations. All other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such other assets, and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations.

(2) Any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(part).

7-33-2125. Annexation of adjacent territory not contained in a fire district. (1) Adjacent territory that is not already a part of a fire district may be annexed in the following manner:

(a) A petition in writing by the owners of 50% or more of the area of privately owned lands of the adjacent area proposed to be annexed who constitute a majority of the taxpaying freeholders within such proposed area to be annexed and whose names appear upon the last completed assessment roll shall be presented to the board of county commissioners.

(b) The commissioners shall hold a hearing on such petition in accordance with the procedure outlined in 7-33-2122 and shall allow the annexation of such proposed adjacent territory unless protests are presented at the hearing by the owners of 50% or more of the area of the privately owned lands included within the original district who constitute a majority of the taxpaying freeholders within the original district.

(2) Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(4)(a).

7-33-2126. Annexation of adjacent territory contained in a fire district. (1) Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner:

(a) A petition in writing by the owners of 50% or more of the privately owned lands of an area which is part of any organized fire district who constitute a majority of the taxpaying freeholders within such area according to the last-completed assessment roll shall be presented to the county commissioners, asking that such area be transferred to and included in any other organized fire district to which said area is adjacent. The petition must set forth the change of boundaries to be affected by such proposed transfer of area.

(b) The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in 7-33-2122. The withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of 50% or more of the area of the privately owned lands included within either district affected who constitute a majority of the taxpaying freeholders of either district according to the last-completed assessment roll.

(2) The withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the firefighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(4)(b).

7-33-2127. Withdrawal by owner of individual tract adjacent to municipality. In lieu of the detraction procedure set forth in 7-33-2122 and 7-33-2123, whenever a person owns land adjacent to a city or town and wishes to have only that land annexed to the city or town, the land may be detracted as follows:

(1) The owner shall mail notice to the chairman of the trustees of the fire district or, if none, to the board of county commissioners of his intention to request annexation.

(2) The owner shall attach a copy of this notice of intention to his petition to the municipal governing body requesting annexation.

(3) Following adoption of the annexation order under 7-2-4714, the land is detracted from the fire district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en.

Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(5).

7-33-2128. Dissolution of fire district. Any fire district organized under this part may be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of 50% or more of the area of the privately owned lands included within such fire district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last-completed assessment roll. The procedure and requirements outlined in 7-33-2101 through 7-33-2103 shall apply to such requests for dissolution of fire districts.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1931; re-en. Sec. 5148, R.C.M. 1935; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969; amd. Sec. 2, Ch. 81, L. 1977; R.C.M. 1947, 11-2008(2).

Part 22

Rural Fire Protection

7-33-2201. Authority of county governing body to protect range, farm, and forest resources. For the purpose of protection and conservation of range, farm, and forest resources and of the prevention of soil erosion, the county governing body may perform the functions provided in this part.

History: En. Sec. 1, Ch. 173, L. 1945; amd. Sec. 12, Ch. 397, L. 1977; R.C.M. 1947, 28-601.

7-33-2202. Functions of county governing body. The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties hereinafter imposed:

(1) The governing body shall provide for the organization of volunteer rural fire control crews.

(2) The governing body shall appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as they consider necessary.

(3) The county governing body shall, within the limitations of 7-33-2205 through 7-33-2209, protect the range, farm, and forest lands within the county from fire in cooperation with federal, state, and other fire protection agencies, including governing bodies of adjoining counties.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part).

7-33-2203. County rural fire chief. The county rural fire chief may be a regular county officer or other person who in the opinion of the board is the best qualified to perform the duties of this office and who is not entitled to additional compensation for the duties hereby imposed.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part).

7-33-2204. District fire chief to serve without compensation. All district fire chiefs shall serve without compensation.

History: En. Sec. 2, Ch. 173, L. 1945; amd. Sec. 1, Ch. 229, L. 1973; amd. Sec. 13, Ch. 397, L. 1977; R.C.M. 1947, 28-602(part).

7-33-2205. Establishment of fire season — permit requirements. The county governing body may in its discretion establish fire seasons annually, during which no person may ignite or set any forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within the county protection area on any forest, range, or croplands subject to the provisions of this part without having obtained an official written permit to ignite or set such fire from the recognized protection agency for that protection area.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(1).

7-33-2206. Violations. Any person who ignites or sets any forest fire, slash-burning fire, land-clearing fire, debris-burning fire, or open fire within any forest, range, or cropland subject to the provisions of this part without first having obtained a written permit to ignite or set such fire is guilty of a misdemeanor.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(2).

7-33-2207. Voluntary urban fire crews for use in rural areas. To augment rural crews in case of serious emergency, the governing body may provide for the organization and training of voluntary urban fire crews to be used in rural areas.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(3).

7-33-2208. Fire control powers — liability. (1) Any county rural fire chief or district rural fire chief or his deputy may enter private property or direct the entry of fire control crews for the purpose of suppressing fires.

(2) A chief or deputy and the county or rural district are immune from suit for injury to persons or property resulting from actions taken to suppress fires under this section.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(4).

7-33-2209. Finance of fire control activities. (1) The county governing body is authorized to appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

(2) If the general fund is budgeted to the full limit, the county governing body may, at any time fixed by law for levy and assessment of taxes, levy a tax at such rate as in their judgment will be necessary to raise such needed sum, not to exceed $15,000.

History: En. Sec. 3, Ch. 173, L. 1945; amd. Sec. 1, Ch. 40, L. 1955; amd. Sec. 1, Ch. 337, L. 1971; amd. Sec. 1, Ch. 73, L. 1977; amd. Sec. 14, Ch. 397, L. 1977; R.C.M. 1947, 28-603(5).

7-33-2210. State to be reimbursed for forest fire suppression activities in noncooperating counties. A county that has not entered into a cooperative or other written agreement with the state for forest protection shall reimburse the state for costs incurred by the state in connection with state fire suppression activities resulting from a forest fire emergency in that county.

History: **En. 28-605 by Sec. 15, Ch. 397, L. 1977; R.C.M. 1947, 28-605.**

Part 23

Fire Protection in Unincorporated Places

7-33-2301. Fire wardens. The board of county commissioners must, upon petition of 10 residents of any unincorporated city, town, or village in the county, appoint a fire warden for such city, town, or village, whose duty it is to examine all chimneys, stoves, stovepipes, ovens, furnaces, boilers, and appurtenances belonging thereto.

History: **En. Sec. 1, p. 101, L. 1876; re-en. Sec. 639, 5th Div. Rev. Stat. 1879; re-en. Sec. 1139, 5th Div. Comp. Stat. 1887; re-en. Sec. 3230, Pol. C. 1895; re-en. Sec. 2074, Rev. C. 1907; re-en. Sec. 5141, R.C.M. 1921; re-en. Sec. 5141, R.C.M. 1935; R.C.M. 1947; 11-2001.**

7-33-2302. Removal of fire dangers — penalty. (1) When any chimney, stove, stovepipe, oven, furnace, boiler, or appurtenance thereto is defective, out of repair, or so placed in any building as to endanger it or any other building by communicating fire thereto, the fire warden, on complaint of any citizen, either orally or in writing, or upon his own examination or other satisfactory proof, must give written notice to the owner or occupant of the building or premises directing the owner or occupant to repair the same so as to make it secure against accident by fire.

(2) He may in the notice require the occupant or owner to replace any defective flue or stovepipe with a new and safe one. If the occupant or owner neglects for the space of 3 days to comply with the terms of said notice, he is guilty of a misdemeanor and punishable accordingly.

History: **En. Sec. 2, p. 101, L. 1876; re-en. Sec. 640, 5th Div. Rev. Stat. 1879; re-en. Sec. 1140, 5th Div. Comp. Stat. 1887; re-en. Sec. 3231, Pol. C. 1895; re-en. Sec. 2075, Rev. C. 1907; amd. Sec. 1, Ch. 17, L. 1921; re-en. Sec. 5142, R.C.M. 1921; re-en. Sec. 5142, R.C.M. 1935; R.C.M. 1947, 11-2002.**

7-33-2303 through 7-33-2310 reserved.

7-33-2311. Fire companies authorized. (1) Fire companies in unincorporated towns and villages are organized by filing with the county clerk of the county in which they are located a certificate in writing, signed by the foreman or presiding officer and secretary, setting forth the date of organization, name, officers, and roll of active and honorary members. The certificate and filing must be renewed annually on or before September 1.

(2) There must not be allowed to any such towns or villages more than one company for each 1,000 inhabitants, but one company must be allowed in any city, town, or village where the population is less than 1,000.

(3) There must not be allowed to any fire company more than 28 certificate members.

History: **En. Sec. 3232, Pol. C. 1895; re-en. Sec. 2076, Rev. C. 1907; re-en. Sec. 5143, R.C.M. 1921; Cal. Pol. C. Sec. 3335; re-en. Sec. 5143, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1977; R.C.M. 1947, 11-2003(part).**

7-33-2312. Organization of fire company. (1) Every fire company organized pursuant to 7-33-2311 must choose or elect a foreman, who is the presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding $5 or expulsion for each offense.

(2) Every regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs. The seal is under the control of and for the use of the secretary and shall be affixed by him to exempt certificates, certificates of active membership, and such other documents as the bylaws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the bylaws provide for the faithful performance of his duties.

History: (1)En. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2004, R.C.M. 1947; (2)En. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907; re-en. Sec. 5146, R.C.M. 1921; re-en. Sec. 5146, R.C.M. 1935; Sec. 11-2006, R.C.M. 1947; R.C.M. 1947, 11-2004(part), 11-2006(part); amd. Sec. 11, Ch. 263, L. 1979; amd. Sec. 37, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "7-33-2311" for "7-33-2312" in (1).

7-33-2313. Duties of chief. (1) The chief of every fire department must inquire into the cause of every fire occurring in the town in which he is chief and keep a record thereof. He must aid in the enforcement of all duly enacted fire ordinances, examine buildings in the process of erection, report violations of ordinances relating to prevention or extinguishment of fires and, when directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be imposed upon him by proper authority. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires, with his badge of office conspicuously displayed. He must prevent injury to, take charge of, and preserve all property rescued from fires and return it to the owner on the payment of the expenses incurred in saving and keeping it. The amount of the expenses, when not agreed to, shall be fixed by a justice of the peace.

(2) He must devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of his department not less than 30 hours of instruction per year in matters pertaining to firefighting, and he must supervise the operation of such plan or program.

History: En. Sec. 3236, Pol. C. 1895; re-en. Sec. 2080, Rev. C. 1907; re-en. Sec. 5147, R.C.M. 1921; re-en. Sec. 5147, R.C.M. 1935; amd. Sec. 6, Ch. 118, L. 1965; amd. Sec. 18, Ch. 157, L. 1977; R.C.M. 1947, 11-2007.

7-33-2314. Certain exemptions for firefighters. The officers and members of regularly organized unpaid fire companies and exempt firefighters are entitled to the following privileges and exemptions:

(1) exemption from payment of poll tax, road tax, and head tax of every description;

(2) exemption from jury duty;

(3) exemption from military duty except in case of war, invasion, or insurrection.

History: En. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-2004(part).

7-33-2315. Certificate of membership in fire company. (1) Every firefighter who has served 5 years in an organized company in this state is an exempt firefighter and must receive from the chief engineer of the department to which he belonged a certificate to that effect.

(2) (a) Every active firefighter must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs. Such certificates must be countersigned by the secretary and over the seal of the company if one is provided.

(b) In lieu of issuing certificates to exempt firefighters by the chief of the fire department, on the certificate of the foreman and secretary of any fire company or the chief of the department, provision being made therefor in the bylaws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military and jury duty.

(3) Each certificate entitles the holder to exemption from military and jury duty. Every such certificate is prima facie evidence of the facts therein stated.

(4) The secretary of the fire department or fire company must keep a record of all certificates of exemption or active membership, the date thereof and to whom issued, and, when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates.

History: Ap. p. Sec. 3233, Pol. C. 1895; re-en. Sec. 2077, Rev. C. 1907; re-en. Sec. 5144, R.C.M. 1921; re-en. Sec. 5144, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2004, R.C.M. 1947; Ap. p. Sec. 3234, Pol. C. 1895; re-en. Sec. 2078, Rev. C. 1907; re-en. Sec. 5145, R.C.M. 1921; re-en. Sec. 5145, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-2005, R.C.M. 1947; Ap. p. Sec. 3235, Pol. C. 1895; re-en. Sec. 2079, Rev. C. 1907; re-en. Sec. 5146, R.C.M. 1921; re-en. Sec. 5146, R.C.M. 1935; Sec. 11-2006, R.C.M. 1947; R.C.M. 1947, 11-2004(part), 11-2005, 11-2006(part).

7-33-2316. Volunteer fire districts or companies — fire departments — not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) No right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan, or payments provided under 19-12-103 may be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

History: En. Sec. 1, Ch. 193, L. 1979.

Compiler's Comments

Preamble. The preamble to Chapter 193, L. 1979, reads as follows: "WHEREAS, confusion has arisen concerning the proper status of prior existing fire districts and fire companies following the formation of a city-county consolidated government with self-government powers; and

WHEREAS, the legislature wishes to clarify this situation with the clear understanding that the substance of the law is not changed; and

WHEREAS, Title 7, chapter 33, part 41, requires municipalities to provide fire services under that part; and

WHEREAS, and city-county consolidated government is neither a county government nor a municipality but under 7-3-1103 has the status of both; and

WHEREAS, this combined status allows the people of the local area to choose the most desirable means to provide local services, including fire services, within reasonable limits of interpreting applicable state law and so long as vested rights are not unreasonably abrogated; and

WHEREAS, the legislature finds that a local government charter that maintains rural fire services organizations as they were prior to consolidation is a reasonable interpretation of those laws; and

WHEREAS, to provide the desirable ratification of any existing charter interpretation to this effect and to clarify the application of such charters in the future.

THEREFORE, it is the purpose of this act to clarify the law on this point without establishing a presumption that the law is in any way substantively altered."

Effective date. Sec. 2, Ch. 193, L. 1979, provided: "This act is effective on its passage and approval." Approved March 21, 1979.

Parts 24 through 40 reserved

Part 41

Municipal Fire Departments

7-33-4101. Fire department authorized and required. In every city and town of this state there shall be a fire department, which shall be organized, managed, and controlled as provided in this part.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; R.C.M. 1947, 11-1901(part).

7-33-4102. Applicability of part. (1) The provisions of this part govern and control fire departments in every city or town organized under whatever form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3.

(2) Whenever the provisions of this part conflict with the provisions of chapter 3, part 42, pertaining to the commission form of government, the provisions pertaining to the commission form of government prevail.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; R.C.M. 1947, 11-1901(part); amd. Sec. 12, Ch. 263, L. 1979.

7-33-4103. Composition of fire department. Such fire department, when established, may consist of one chief of the fire department and as many assistant chiefs of the fire department and such number of firefighters as the council or commission may from time to time provide and may also include a city electrician and as many assistant electricians as the council or commission may from time to time provide.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

7-33-4104. Duties of chief and assistant chief of fire department. (1) The chief of the fire department shall have sole command and control over all persons connected with the fire department of the city or town and shall possess full power and authority over its organization, government, and discipline and to that end may from time to time establish such disciplinary rules as he may deem advisable, subject to the approval of the city or town council. He shall have charge of and be responsible for the engines and other apparatus and the property of the town or city furnished the fire department and see that they are at all times ready for use in the extinguishing of fires.

(2) The assistant chief of the fire department shall aid the chief in the work of the department and in his absence shall perform his duties.

History: En. Sec. 6, p. 75, L. 1899; re-en. Sec. 3331, Rev. C. 1907; re-en. Sec. 5114, R.C.M. 1921; re-en. Sec. 5114, R.C.M. 1935; R.C.M. 1947, 11-1906.

7-33-4105. Appointment of chief engineer of fire department. (1) The council of any city or town where there is no paid fire department may appoint a chief engineer of the fire department:

(a) to manage and control the fire engines and apparatus furnished by the city or town for the extinguishing and the prevention of fires;

(b) to superintend and direct all fire companies; and

(c) to examine and inspect all buildings, chimneys, flues, and boilers and other things within the city or town and require the same to be put in a safe condition or removed if liable to cause fire.

(2) In case a paid fire department is established in any city or town, the council may by ordinance provide for the maintenance of the same and the employment of the officers and employees thereof.

History: En. Sec. 4816, Pol. C. 1895; re-en. Sec. 3325, Rev. C. 1907; re-en. Sec. 5140, R.C.M. 1921, re-en. Sec. 5140, R.C.M. 1935; R.C.M. 1947, 11-1940.

7-33-4106. Appointment of firefighters. The mayor or manager shall nominate and, with the consent of the council or commission, appoint the chief of the fire department, the assistant chief or chiefs of the fire department, and all firefighters.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

7-33-4107. Qualifications of firefighters. The state of Montana determines that age is a valid, bona fide occupational qualification for the position of firefighter because of the rigorous physical demands of the firefighting profession and the expectation of many years of emergency service. The qualifications of firefighters shall be that they:

(1) shall not be more than 34 years of age at the time of original appointment;

(2) shall have passed a physical examination by a practicing physician duly authorized to practice in this state; and

(3) at the option of said city or town, shall be qualified voters of the city or town.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R.C.M. 1921; re-en. Sec. 5113, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969; R.C.M. 1947, 11-1905(part); amd. Sec. 1, Ch. 82, L. 1981.

Compiler's Comments

1981 Amendment: Added the first sentence relating to age qualification; substituted "more than 34" for "over 31" before "years of age" in (1).

7-33-4108. Physical examination. The examination required by 7-33-4107(2) shall be in writing and filed with the city or town clerk. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firefighters in the performance of their duty.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R.C.M. 1921; re-en. Sec. 5113, R.C.M. 1935; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969; R.C.M. 1947, 11-1905(part).

7-33-4109. Supplementary volunteer fire department authorized for cities of second class. (1) In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.

(2) (a) The volunteer fire department shall be exempt from obligations in 7-33-4126 set out as applying to the paid department.

(b) Likewise, the city commission or governing department shall be exempted as to compliance with 7-33-4126 and 7-33-4128 insofar as the same may pertain to the said volunteer fire department by way of penalties and infringements.

(3) A volunteer is one who is an enrolled member of the volunteer fire department and assists the paid fire department; who is eligible to serve only on the board of trustees of the fire department relief association of such city (provided not more than three volunteer members are on said board of trustees); but who shall not be entitled to receive a service pension.

(4) The governing body of said city may at its discretion pay an enrolled volunteer firefighter the minimum of $1 for attending a fire and a minimum of $1 for each hour or fraction of an hour after the first hour in active service at said fire or returning any or all equipment to its proper place.

(5) In the attending of fires, any volunteer shall act and serve under the supervision of the chief of the paid fire department.

History: (1) thru (4)En. Sec. 3, Ch. 136, L. 1939; amd. Sec. 3, Ch. 489, L. 1977; Sec. 11-1936, R.C.M. 1947; (5)En. Sec. 4, Ch. 136, L. 1939; Sec. 11-1937, R.C.M. 1947; R.C.M. 1947, 11-1936, 11-1937.

7-33-4110. Volunteer companies not affected. Nothing contained in 7-33-4101 through 7-33-4104, 7-33-4106 through 7-33-4108, 7-33-4112, 7-33-4113, 7-33-4122 through 7-33-4125, and 7-33-4127 shall be held or construed to affect any fire organization known as a volunteer fire company.

History: En. Sec. 10, p. 76, L. 1899; re-en. Sec. 3333, Rev. C. 1907; re-en. Sec. 5116, R.C.M. 1921; re-en. Sec. 5116, R.C.M. 1935; R.C.M. 1947, 11-1908(part).

7-33-4111. Tax levy for volunteer fire departments. For the purpose of supporting volunteer fire departments in any city or town which does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may levy, in addition to other levies permitted by law, a special tax not exceeding 2 mills on each dollar of the taxable value of the property of the city or town subject to taxation.

History: En. Sec. 1, Ch. 26, L.1927; re-en. Sec. 5116.1, R.C.M. 1935; amd. Sec. 26, Ch. 566, L. 1977; R.C.M. 1947, 11-1909.

7-33-4112. Mutual aid agreements. (1) A mutual aid agreement is an agreement for protection against natural or manmade disasters.

(2) Councils or commissions of incorporated municipalities may enter such agreements with the proper authority of:

(a) other incorporated municipalities;
(b) fire districts;
(c) unincorporated municipalities;
(d) state agencies which have fire protection services;
(e) private fire-prevention agencies;
(f) federal agencies.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R.C.M. 1921; re-en. Sec. 5109, R.C.M. 1935; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965; R.C.M. 1947, 11-1901(b).

7-33-4113. Personnel of fire department not considered municipal officers. The chief of the fire department, the assistant chief or chiefs of the fire department, and the firefighters shall not be deemed officers of the municipal corporation in which such fire department is established.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

7-33-4114. Limitation on liability for delays by persons authorized to receive and transmit fire reports. No person, corporation, partnership, or association which is authorized by any city, town, village, or district fire department or by any volunteer fire company to receive any report of fire or which agrees to receive and transmit such report to such fire department or volunteer fire company shall be liable in any civil action for damage to property or persons, including death, caused by delay in reporting or failure to report such fire unless such delay or failure is the result of the gross negligence of such person, corporation, partnership, or association.

History: En. Sec. 1, Ch. 42, L. 1955; R.C.M. 1947, 11-1941.

7-33-4115 through 7-33-4120 reserved.

7-33-4121. Rules governing employment in fire departments. The city councils or commissioners of cities of the first and second class shall have power to establish and promulgate rules governing the employment of the members or employees of their respective fire departments.

History: En. Sec. 2, Ch. 91, L. 1917; re-en. Sec. 5139, R.C.M. 1921; re-en. Sec. 5139, R.C.M. 1935; R.C.M. 1947, 11-1939.

7-33-4122. Term of appointment of firefighters — probationary period. Each appointment shall be first made for a probationary term of 6 months, and thereafter the mayor or manager may nominate and, with the consent of the council or commission, appoint such chief and assistant chief or chiefs of the fire department and firefighters, who shall thereafter hold their respective appointments during good behavior and while they have the physical ability to perform their duties.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

7-33-4123. Authority to suspend firefighters. (1) The mayor or manager may suspend the chief and assistant or any firefighter of the fire department for neglect of duty or a violation of any of the rules of the fire department.

(2) The chief of the fire department may suspend the assistant chief of the fire department or any firefighter for like cause.

(3) The assistant chief of the fire department may suspend any firefighter for a like cause.

History: En. Sec. 3, p. 74, L. 1899; re-en. Sec. 3328, Rev. C. 1907; re-en. Sec. 5111, R.C.M. 1921; re-en. Sec. 5111, R.C.M. 1935; amd. Secs. 3 and 4, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1903(part).

7-33-4124. Suspension procedure. (1) In all cases of suspension the person suspended must be furnished with a copy of the charge against him, in writing, setting forth reasons for the suspension. Such charges must be presented to the next meeting of the council or commission and a hearing had thereon, when the suspended member of the fire department may appear in person or by counsel and make his defense to said charges.

(2) Should the charges not be presented to the next meeting of the council or commission after the suspension or should the charges be found not proven by the council or commission, the suspended person shall be reinstated and be entitled to his usual compensation for the time so suspended.

(3) If such charges are found proven by the council or commission, the council or commission, by a vote of a majority of the whole council or commission, may impose such penalty as it shall determine the offense warrants, either in the continuation of the suspension for a limited time or in the removal of the suspended person from the fire department.

History: En. Sec. 3, p. 74, L. 1899; re-en. Sec. 3328, Rev. C. 1907; re-en. Sec. 5111, R.C.M. 1921; re-en. Sec. 5111, R.C.M. 1935; amd. Secs. 3 and 4, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1903(part).

7-33-4125. Reduction and subsequent increase in number of firefighters based on seniority. (1) Should the council at any time reduce the number of firefighters in the fire department, those most recently appointed shall be selected for retirement from the fire department. The city or town clerk shall keep a list of such retired firefighters.

(2) Should the number of firefighters be again increased by the council, the men on said list shall be called into service, the longest service firefighters being first selected for service in the fire department.

History: En. Sec. 4, p. 74, L. 1899; re-en. Sec. 3329, Rev. C. 1907; re-en. Sec. 5112, R.C.M. 1921; re-en. Sec. 5112, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1904.

7-33-4126. Hours of work of members of paid fire departments in cities of first or second class. (1) The city council, city commission, or other governing body in cities of the first or second class shall divide all members of the paid fire department into platoons of three shifts. The members of each shift shall not be required to work or be on duty more than 8 hours of each consecutive 24 hours except in the event of a conflagration or other similar emergency when any of such members may be required to serve so long as the necessity therefor exists.

(2) Each member shall be entitled to at least 1 day off duty out of each 8-day period of service without loss of compensation.

History: Ap. p. Sec. 1, Ch. 15, L. 1937; Sec. 11-1931, R.C.M. 1947; Ap. p. Sec. 1, Ch. 136, L. 1939; Sec. 11-1934, R.C.M. 1947; R.C.M. 1947, 11-1931, 11-1934.

7-33-4127. Compensation of fire department personnel. The compensation of the chief of the fire department and assistant chiefs of the fire department and firefighters in cities and towns where the council or commission shall establish a paid fire department and the city electrician and assistant city electricians shall be fixed by ordinance.

History: En. Sec. 2, p. 73, L. 1899; re-en. Sec. 3327, Rev. C. 1907; amd. Sec. 1, Ch. 46, L. 1911; re-en. Sec. 5110, R.C.M. 1921; re-en. Sec. 5110, R.C.M. 1935; amd. Sec. 2, Ch. 151, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-1902(part).

7-33-4128. Minimum wages of firefighters in cities of first and second class. After July 1, 1976, there shall be paid to each duly appointed and confirmed member of the fire departments of cities or towns of the first and second class of the state a minimum wage for a daily service of 8 consecutive hours of work of at least $750 per month for the first year of service and thereafter at least $750 per month plus 1% of said minimum base monthly salary for each additional year of service.

History: En. Sec. 1, Ch. 293, L. 1947; amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, Ch. 62, L. 1957; amd. Sec. 1, Ch. 267, L. 1967; amd. Sec. 1, Ch. 342, L. 1969; amd. Sec. 1, Ch. 460, L. 1973; amd. Sec. 1, Ch. 324, L. 1975; Sec. 11-1932, R.C.M. 1947; redes. 41-2303.1 by Sec. 1, Ch. 448, L. 1977; R.C.M. 1947, 41-2303.1(part).

7-33-4129. Exceptions to certain overtime provisions. The provisions of Title 39, chapter 3, part 4 relating to the payment of a rate of compensation of not less than 1 ½ times the hourly wage for employment in excess of 40 hours in a work week shall not apply to employment of appointed and confirmed members of a fire department of cities and towns unless such compensation is agreed upon in a collective bargaining agreement.

History: En. 41-2303.2 by Sec. 2, Ch. 448, L. 1977; R.C.M. 1947, 41-2303.2.

7-33-4130. Group insurance for firefighters — funding. (1) Cities of the first and second class, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective firefighters;

(b) pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for firefighters and their dependents notwithstanding the provisions of Title 2, chapter 18, part 7;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed by subsection (1)(b).

(2) Those incorporated cities and towns which require additional funds to finance the provisions of this section may levy on property, by the amount required to meet these provisions, a tax not to exceed 2 mills on the dollar upon all property in the respective city or town. This levy shall be collected in the same manner and at the same time as other taxes are levied.

History: En. 11-1024.1, 11-1024.2 by Secs. 1, 2, Ch. 39, L. 1975; R.C.M. 1947, 11-1024.1, 11-1024.2; amd. Sec. 2, Ch. 88, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the requirement that first- and second-class cities are to pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for firefighters and their dependents for the requirement that cities pay 100% of the premium for insurance for each fireman and his dependents in (1)(b); added subsection (1)(c).

Interim Study Committee Bill: Chapter 88, L. 1981 (HB 3), was introduced at the request of the interim Study Committee on State Mandates and the Effects of State-Owned Property on Local Governments. See committee report, Legislative Council, 1980.

7-33-4131. Firefighter's rights in event of city-county consolidation. A firefighter employed by a fire department established as required by law in a city or town of the county prior to the election and qualification of a commission under part 11 or parts 12 and 13 of chapter 3 or other acts of consolidation or disincorporation has the same job tenure rights as though no election and qualification had taken place.

History: En. Sec. 83, Ch. 121, L. 1923; re-en. Sec. 5520.84, R.C.M. 1935; amd. Sec. 1, Ch. 192, L. 1961; amd. Sec. 1, Ch. 34, L. 1975; amd. Sec. 31, Ch. 157, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3524(1).

7-33-4132. Violation and penalty. Any person who shall violate any of the provisions of 7-33-4126 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $600, by imprisonment in the county jail for not less than 30 days or more than 7 months, or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 15, L. 1937; R.C.M. 1947, 11-1933.

Part 42

Powers of Municipal Council Related to Fire Services

7-33-4201. Establishment of fire department and fire alarm system. The city or town council has power to establish a fire department and prescribe and regulate its duties and to maintain a fire alarm.

History: En. Subd. 27, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.26, R.C.M. 1935; R.C.M. 1947, 11-929(part).

7-33-4202. Provision for fire equipment. The city or town council has power to erect engine, hose, and hook-and-ladder houses and to provide engines and other implements for the extinguishment of fire.

History: En. Subd. 28, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.27, R.C.M. 1935; R.C.M. 1947, 11-930.

7-33-4203. Authority to restrict building to protect against fire. For the purpose of guarding against fire, the city or town council has power to prescribe the limits within which wooden or combustible buildings must not be erected, placed, or repaired and to establish fire limits within the city or town.

History: En. Subd. 26, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.25, R.C.M. 1935; R.C.M. 1947, 11-928.

7-33-4204. Inspection and regulation of fire hazards. The city or town council has power to inspect chimneys, flues, fireplaces, stovepipes, ruins, structures, and boilers and, when dangerous, to require the same to be removed or put in order and prohibit the use thereof until safe.

History: En. Subd. 29, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.28, R.C.M. 1935; R.C.M. 1947, 11-931.

7-33-4205. Regulation of explosives and inflammable materials. The city or town council has power to regulate and prevent the storage or handling of gunpowder, giant powder, nitroglycerine, other inflammable explosives or materials, tar, pitch, kerosene, oils, and turpentine and to prohibit the storage of the same within 3 miles of the city limits.

History: En. Subd. 30, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.29, R.C.M. 1935; R.C.M. 1947, 11-932.

7-33-4206. Regulation of bonfires, fireworks, and other fire-causing agents. The city or town council has power to regulate or prohibit the building of bonfires or the explosion, use, or selling of fireworks, firecrackers, torpedoes, other pyrotechnics, or toy pistols or guns within the city or town.

History: En. Subd. 31, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.30, R.C.M. 1935; R.C.M. 1947, 11-933.

7-33-4207. Regulation of industries with fire-causing potential. The city or town council has power to regulate, restrain, or prevent the carrying on of manufactories dangerous in causing or producing fires.

History: En. Subd. 55, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.54, R.C.M. 1935; R.C.M. 1947, 11-957(part).

7-33-4208. Adoption of fire code. The governing body of an incorporated city or town may adopt technical fire codes, in whole or in part, by reference under the procedure provided in 7-5-4202.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(part).

CHAPTER 34

MEDICAL SERVICES AND BOARDING HOMES FOR THE AGED

Part 1 — Ambulance Services

Section
7-34-101. Ambulance services authorized.
7-34-102. Special mill levy permitted.
7-34-103. Manner of providing ambulance service.
7-34-104. Certain ambulance services unaffected.

Parts 2 through 20 reserved

Part 21 — Hospital Districts

7-34-2101. Purpose of part.
7-34-2102. Definitions.
7-34-2103. Petition required to create hospital district.
7-34-2104. Details relating to petition.
7-34-2105. Petition to be filed with county clerk — clerk's certificate.
7-34-2106. Presentation of petition to board of county commissioners — hearing required.
7-34-2107. Notice of hearing.
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7-34-2110. Resolution calling for election.
7-34-2111. Territory of hospital district.

7-34-2112. Conduct of election on question of creating district.
7-34-2113. Who may vote.
7-34-2114. Procedure upon favorable vote.
7-34-2115. District to be governed by elected trustees.
7-34-2116. Election of first board of trustees.
7-34-2117. Procedure for the conduct of election for trustees.
7-34-2118. Term of office.
7-34-2119. Organization of board of trustees.
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7-34-2121. Vacancies.
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7-34-2123. Admission to district hospital facilities.
Sections 7-34-2124 through 7-34-2130 reserved.
7-34-2131. Hospital district bonds authorized.
7-34-2132. Hospital district budget.
7-34-2133. Levy of district taxes — limit on mill levy.
7-34-2134. Special additional mill levy authorized.
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7-34-2151. Annexation of land to hospital district.
7-34-2152. Petition to annex land.
7-34-2153. Hearing on petition for annexation — notice.
7-34-2154. Decision on annexation petition.
7-34-2155. Effect of annexation.
7-34-2156. Withdrawal of land from hospital district.
7-34-2157. Hearing on petition for withdrawal — notice.
7-34-2158. Decision on withdrawal petition — appeal.
7-34-2159. Effective date of withdrawal.
7-34-2160. Withdrawing property subject to existing indebtedness.
7-34-2161. Dissolution of hospital district.
7-34-2162. Hearing on petition for dissolution — notice.
7-34-2163. Decision on dissolution petition.
7-34-2164. Effect of dissolution.

Part 22 — County Hospital Services

7-34-2201. Erection and management of county hospital.
7-34-2202. Hospital commission.
7-34-2203. Provision of care for indigent and nonindigent sick.
7-34-2204. Lease of county property for hospital purposes.

Part 23 — County Boarding and Nursing Homes for the Aged

7-34-2301. Construction and operation of county boarding or nursing home authorized.
7-34-2302. Nature of services provided.
7-34-2303. Lease of county property for boarding or nursing home.

Part 24 — Financing of County-Operated Hospitals and Nursing Homes

7-34-2401. Depletion allowance reserve fund authorized.
7-34-2402. Sources of money for depletion allowance reserve fund.
7-34-2403. Accumulation of reserve fund.
7-34-2404. Investment of reserve fund.
Sections 7-34-2405 through 7-34-2410 reserved.
7-34-2411. Hospital and nursing home bonds authorized.
7-34-2412. Applicability.
7-34-2413. Limitations on bond authority.
7-34-2414. Election required on question of issuance of bonds.
7-34-2415. Details of bonds.

7-34-2416. Tax-exempt status of bonds.
7-34-2417. Special tax levy authorized.
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Part 25 — Multicounty Operation of Hospitals and Nursing Homes

7-34-2501. Definitions.
7-34-2502. Joint institutions authorized.
7-34-2503. Contract for joint institution.
7-34-2504. Division of costs among counties.

Parts 26 through 40 reserved

Part 41 — Municipal Hospital Services

7-34-4101. Detention hospitals.

Part 1

Ambulance Services

7-34-101. Ambulance services authorized. A county, city, or town, acting through its governing body, may establish and maintain an ambulance service for such county, city, or town. Any county, city, or town may contract with any county, city, or town to establish and maintain a joint ambulance service and to share the costs, such costs to be apportioned according to the benefits to accrue, with the proportion to be paid by each to be fixed in advance by joint resolution by the respective governing bodies, if the governing body has received a petition signed by 15% of the electors registered to vote in the county, city, or town at the last preceding general election or in each of the counties, cities, or towns wherein a joint ambulance service is being established.

History: **En. Sec. 1, Ch. 238, L. 1961; amd. Sec. 1, Ch. 162, L. 1967; R.C.M. 1947, 69-3601(part).**

7-34-102. Special mill levy permitted. In addition to all other levies authorized by law, each county, city, or town may levy an annual tax up to 1 mill on the dollar of the taxable value of all taxable property within the county, city, or town to defray the costs incurred in providing ambulance service.

History: **En. Sec. 1, Ch. 238, L. 1961; amd. Sec. 1, Ch. 162, L. 1967; R.C.M. 1947, 69-3601(part).**

7-34-103. Manner of providing ambulance service. If a county, city, or town establishes or maintains such ambulance service it may, acting through its governing board:

(1) operate the service itself or contract for such service;

(2) buy, rent, lease, or otherwise contract for vehicles, equipment, facilities, operators, or attendants;

(3) adopt rules and establish fees or charges for the furnishing of such ambulance service.

History: **En. Sec. 2, Ch. 238, L. 1961; R.C.M. 1947, 69-3602.**

7-34-104. Certain ambulance services unaffected. The provisions of this part shall in no way affect county, city, or town ambulance service in operation on March 14, 1961.

History: En. Sec. 3, Ch. 238, L. 1961; R.C.M. 1947, 69-3603.

Parts 2 through 20 reserved

Part 21

Hospital Districts

7-34-2101. Purpose of part. The purpose of this part is to authorize the establishment of public hospital districts which shall have power to supply hospital facilities and services to residents of such districts and, as herein authorized, to others.

History: En. Sec. 1, Ch. 155, L. 1953; amd. Sec. 1, Ch. 257, L. 1969; R.C.M. 1947, 16-4301(part).

7-34-2102. Definition. As used in this part, unless the context requires otherwise, "hospital facilities" means a hospital or a hospital-related facility, including out-patient facilities, public health centers, rehabilitation facilities, long-term care facilities, and infirmaries.

History: En. Sec. 1, Ch. 336, L. 1973; R.C.M. 1947, 16-4301.1.

7-34-2103. Petition required to create hospital district. Proceedings for creation of a hospital district shall be initiated by a petition signed by not less than 30% of the qualified electors of the proposed hospital district who are taxpayers upon property within the proposed hospital district and whose names appear on the last-completed assessment roll for state and county taxes.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).

7-34-2104. Details relating to petition. (1) The petition may consist of one sheet or several sheets, identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk. The petition shall give the post-office address and voting precinct of each petitioner.

(2) Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the complete petition the affidavit of some person who circulated or assisted in circulating the petition that he believes the signatures thereon are genuine and the signers knew the contents thereof before signing the same.

History: En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).

7-34-2105. Petition to be filed with county clerk — clerk's certificate. The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, shall be filed with the county clerk and recorder, who shall, within 15 days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners and attach it to a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) the total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last-completed assessment roll for state and county taxes;

(2) which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition;

(3) whether such qualified signers constitute more or less than 30% of the registered electors of the proposed hospital district who are taxpayers upon property thereon and whose names appear on the last-completed assessment roll for state and county taxes.

History: **En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).**

7-34-2106. Presentation of petition to board of county commissioners — hearing required. (1) The county clerk and recorder shall present the petition and his certificate to the board of county commissioners at its first meeting held after he has attached his certificate.

(2) The board shall thereupon carefully examine the petition, and if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of such hospital district.

History: **En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).**

7-34-2107. Notice of hearing. (1) A notice of the hearing required by 7-34-2106 shall be published in a newspaper having general circulation in the territory within the boundaries of the proposed hospital district once each week for at least 2 weeks, the last publication to be at least 2 weeks before the hearing. If there is no newspaper having general circulation within the boundaries of the proposed hospital district, the notice of hearing shall be posted in at least three public places within the boundaries of the proposed district for 2 weeks before the hearing.

(2) The notice shall state the time, date, place, and purpose of the hearing, describe the boundaries of the proposed hospital district, and state that any person residing in or owning property within the proposed hospital district may appear in support of or in opposition to the petition at such hearing.

History: **En. Sec. 2, Ch. 155, L. 1953; amd. Sec. 2, Ch. 257, L. 1969; R.C.M. 1947, 16-4302(part).**

7-34-2108. Hearing on petition. At the time fixed for said hearing, the board shall hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts or hearing petitioners or objectors without additional published or posted notice, but no adjournment shall exceed 2 weeks in all from and after the date originally noticed and published for the hearing.

History: **En. Sec. 3, Ch. 155, L. 1953; amd. Sec. 3, Ch. 257, L. 1969; R.C.M. 1947, 16-4303.**

7-34-2109. Election on question of creating hospital district. The board of county commissioners, upon completion of the hearing provided for in 7-34-2106 through 7-34-2108, shall proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition.

History: **En. Sec. 4, Ch. 155, L. 1953; amd. Sec. 4, Ch. 257, L. 1969; R.C.M. 1947, 16-4304(part).**

7-34-2110. Resolution calling for election. (1) The board of county commissioners in its resolution of reference may make such changes in the boundaries of the proposed district as it considers advisable, without including any additional lands not described in the petition, and it shall call an election upon the question of the creation of the district.

(2) The board must designate in its resolution whether a special election shall be held or whether the matter shall be determined at the next general election. If a special election is ordered, the board must specify in its order the date for such election.

History: **En. Secs. 4, 5, Ch. 155, L. 1953; amd. Secs. 4, 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4304(part), 16-4305(part); amd. Sec. 345, Ch. 571, L. 1979.**

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-34-2111. Territory of hospital district. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: **En. Sec. 1, Ch. 155, L. 1953; amd. Sec. 1, Ch. 257, L. 1969; R.C.M. 1947, 16-4301(part).**

7-34-2112. Conduct of election on question of creating district. (1) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(2) At the election, the ballots must contain the words "Hospital district — Yes" and "Hospital district — No".

History: **En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4305(part); amd. Sec. 346, Ch. 571, L. 1979.**

7-34-2113. Who may vote. Only qualified electors residing within the proposed hospital district may vote on the question of the creation of the hospital district.

History: **En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969; R.C.M. 1947, 16-4305(part); amd. Sec. 2, Ch. 213, L. 1979.**

7-34-2114. Procedure upon favorable vote. (1) In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within 10 days after the election, certify such result by resolution and proceed with the organization of such district as specified in this part.

(2) After 20 days from the passage of such resolution, the validity of the creation of such hospital district and the regularity of all proceedings preliminary thereto shall not be questioned or asserted in any legal action.

History: **En. Sec. 6, Ch. 155, L. 1953; amd. Sec. 6, Ch. 257, L. 1969; R.C.M. 1947, 16-4306.**

7-34-2115. District to be governed by elected trustees. (1) Said hospital district shall be governed and managed by a board of three or five trustees, elected by the registered electors residing in the district. The number of trustees on the board and, if the number is set at five, the initial terms of two trustees shall be fixed by the bylaws of the district.

(2) The trustees must be elected from among the registered electors qualified to vote at general elections within said district.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2116. Election of first board of trustees. (1) The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, and shall qualify upon the organization of the district if created.

(2) The trustees may be nominated and have their names appear upon the ballots as provided in 7-34-2117.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 347, Ch. 571, L. 1979; amd. Sec. 2, Ch. 27, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "7-34-2117" for "13-14-113" in (2).

7-34-2117. Procedure for the conduct of election for trustees. (1) All elections of trustees following the election of the first board of trustees shall be conducted at the time provided in 13-1-104(3) and in the manner provided by 13-1-401.

(2) Candidates for the office of trustee must be nominated by petition filed with the election administrator or deputy election administrator at least 30 days before the election day and signed by at least five electors of the district.

(3) If there is no nomination petition filed, it shall not be necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term, the term to be the same as if the trustee were elected.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 348, Ch. 571, L. 1979; amd. Sec. 3, Ch. 27, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "and nominations for election" after "All elections" in (1); inserted "provided in 13-1-104(3)" in (1); substituted "13-1-401" for "Title 13" at the end of (1); inserted subsection (2).

7-34-2118. Term of office. (1) The trustees elected for the first board shall serve for terms:

(a) commencing upon their being elected and qualified; and

(b) terminating 1, 2, and 3 years, respectively, from the first district meeting following their election and until their respective successors shall be elected and qualified.

(2) Annually thereafter there may be elected a trustee to serve for a term of 3 years and until his successor shall be qualified. Such term of 3 years

shall commence at the first district meeting following the said trustee's election.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part); amd. Sec. 391, Ch. 571, L. 1979; amd. Sec. 4, Ch. 27, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "district meeting" for "Monday in January" in (1) and (2).

7-34-2119. Organization of board of trustees. The trustees at their first meeting shall adopt bylaws for the government and management of the district and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2120. Compensation of trustees. The trustees shall serve without pay.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2121. Vacancies. A vacancy upon the board of trustees or in the office of clerk shall be filled by appointment by the remaining members, and the appointee shall serve until the next ensuing election for trustees.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969; amd. Sec. 1, Ch. 399, L. 1971; amd. Sec. 1, Ch. 277, L. 1975; R.C.M. 1947, 16-4307(part).

7-34-2122. Powers of district. A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

(1) employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits or by such fees as may be agreed upon;

(2) cause reports, plans, studies, and recommendations to be prepared;

(3) lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, conditional sales contract, or otherwise and acquire real or personal property by gift;

(4) lease or construct, equip, and furnish necessary buildings and grounds and maintain the same;

(5) adopt, by resolution, rules for the operation and administration of any and all hospital facilities under its control and for the admission of persons thereto;

(6) impose by resolution and collect charges for all services and facilities provided and made available by it;

(7) levy taxes as hereinafter prescribed;

(8) borrow money and issue bonds as hereinafter prescribed;

(9) procure insurance against liability of the district or its officers and employees, or both, for torts committed within the scope of their official

duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

(10) sell or lease any of its facilities or equipment as may be deemed expedient;

(11) cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part).

7-34-2123. Admission to district hospital facilities. Such a hospital district must admit persons to its facilities without regard to race, color, or sex. Such obligation shall not prevent the board of trustees of such hospital district from establishing reasonable minimum rates for hospital quarters, services, and supplies. Indigents needing such services, for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals on terms and rates prescribed or authorized by law.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part).

7-34-2124 through 7-34-2130 reserved.

7-34-2131. Hospital district bonds authorized. (1) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

(2) The amount of bonds issued for such purpose and outstanding at any time may not exceed 22.5% of the taxable value of the property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

(3) Such bonds shall be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of second- or third-class school districts by Title 20, chapter 9, part 4.

(4) Nothing herein shall be construed to preclude the provisions of Title 50, chapter 6, part 1, allowing the state to apply for and accept federal funds.

History: En. Sec. 8, Ch. 155, L. 1953; amd. Sec. 8, Ch. 257, L. 1969; R.C.M. 1947, 16-4308(part); amd. Sec. 58, Ch. 614, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "may not exceed 22.5% of the taxable value of the property" for "shall not exceed 5% of taxable property" in (2).

Validation: Section 64, Ch. 614, L. 1981, provided: "Notwithstanding any provisions of this act, any outstanding indebtedness or bond issue on January 1, 1982, of any governmental subdivision is not invalidated because of any changes in the taxable valuation of the subdivision due to removal of automobiles and trucks having a rated capacity of three-quarters of a ton or less from the tax base."

Effective Date: Section 66, Ch. 614, L. 1981, provided: (1) Except as provided in subsection (2), this act is effective January 1, 1982.

(2) Section 5 is effective on passage and approval.

Effect of 1981 Amendment: The primary purpose of Ch. 614, L. 1981 was to replace the system of taxation of automobiles and light trucks with a fee system. With the adoption of the fee system, automobile and light trucks are no longer taxable property. The resulting loss of taxable valuation has a direct effect on the amount of indebtedness a political subdivision can incur. Thus it was necessary in Ch. 614 to increase the percentage of taxable valuation used as a limitation on indebtedness to offset the loss of taxable valuation attributable to automobile and light trucks.

7-34-2132. Hospital district budget. The board of hospital trustees shall annually present their budget to the board of county commissioners at the regular budget meetings as prescribed by law and therewith certify the amount of money necessary and proper for the ensuing year.

History: **En. Sec. 9, Ch. 155, L. 1953; amd. Sec. 9, Ch. 257, L. 1969; R.C.M. 1947, 16-4309(part).**

7-34-2133. Levy of district taxes — limit on mill levy. (1) The board of county commissioners must, annually at the time of levying county taxes, fix and levy a tax (in mills) upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees under 7-34-2132.

(2) The tax so levied for all hospital district purposes other than payment of bonded indebtedness shall not in any year exceed 3 mills on each dollar of taxable valuation of property within said district.

History: **En. Sec. 9, Ch. 155, L. 1953; amd. Sec. 9, Ch. 257, L. 1969; R.C.M. 1947, 16-4309(part).**

7-34-2134. Special additional mill levy authorized. If the maximum levy of 3 mills on each dollar of taxable valuation of property within the hospital district is inadequate to raise the amount of money certified as necessary and proper by the board of hospital trustees as provided in 7-34-2132, the board of county commissioners may make an additional levy for 2 years upon the taxable property within said hospital district of 6 mills or less sufficient to raise the amount certified by the board of hospital trustees.

History: **En. 16-4309.1 by Sec. 1, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(1); amd. Sec. 1, Ch. 554, L. 1979.**

Compiler's Comments

Effective date. Sec. 3, Ch. 554, L. 1979, provided: "This act is effective upon passage and approval." Approved April 12, 1979.

7-34-2135. Election required to impose special additional mill levy. (1) Before each additional levy provided for in 7-34-2134 may be made, the question shall be submitted to a vote of the people at a primary election held in an even-numbered year in the following form:

"Shall there be an additional levy of (specify number) mills upon the taxable property of the (specify hospital district) for 2 years necessary to raise the sum of (specify the approximate amount to be raised by the additional tax levy) for the purpose of (specify purpose for which the additional levy is made)?

☐ FOR an additional levy to raise the sum of (state the approximate amount to be raised by the additional tax levy), and being (give number) mills.

☐ AGAINST an additional tax levy to raise the sum of (state approximate amount to be raised by the additional tax levy), and being (give number) mills."

(2) Notice of the election, clearly stating the amount and the purpose of the additional levy, must be given and the election held and conducted and

the returns made in all respects in the manner prescribed by law with regard to the submission of questions to the electors under the general election laws.

History: En. 16-4309.1, 16-4309.2 by Secs. 1, 2, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(2), 16-4309.2; amd. Sec. 2, Ch. 554, L. 1979.

7-34-2136. Approval required to impose special additional mill levy. (1) A majority of the votes cast shall be necessary to permit the additional levy provided for in 7-34-2134, which shall be collected in the same manner as other hospital district taxes.

(2) If the calculated percentage of qualified electors voting in the election is less than 30%, the additional levy shall be deemed to have been rejected.

History: En. 16-4309.1 by Sec. 1, Ch. 132, L. 1974; R.C.M. 1947, 16-4309.1(3), (4).

7-34-2137. Collection of taxes and disposition of funds. (1) The procedures for the collection of the tax shall be in accordance with the existing laws of Montana.

(2) The funds collected under the tax levy shall be held by the county treasurer, who shall be, ex officio, the treasurer for the hospital district, and such treasurer shall keep a detailed account of all tax money paid into the fund, of all other money from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by the majority of its membership.

History: En. Sec. 10, Ch. 155, L. 1953; amd. Sec. 2, Ch. 97, L. 1955; amd. Sec. 10, Ch. 257, L. 1969; R.C.M. 1947, 16-4310.

7-34-2138 through 7-34-2150 reserved.

7-34-2151. Annexation of land to hospital district. The boundaries of any such public hospital district may be altered and outlying districts may be annexed from territory contiguous thereto in the following manner.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2152. Petition to annex land. A petition signed by 10% or more of the freeholders within the territory proposed to be annexed or by a majority of such freeholders if there are less than 25 residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2153. Hearing on petition for annexation — notice. (1) At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published in two successive issues of a newspaper published in the county prior to the date fixed by said board for the hearing of said petition, which date shall be not less than 4 weeks after the filing of such petition.

(2) Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2154. Decision on annexation petition. Said board of county commissioners shall have the power, by order entered on its minutes:

(1) to grant said petition either in whole or in part;

(2) to alter the boundaries of said public hospital district; and

(3) to annex thereto all or such portion of said area or territory described in said petition as will be benefited thereby.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2155. Effect of annexation. The annexed territory shall become and be a part of such public hospital district on the date fixed in the order of annexation and shall be subject to the taxes authorized by this part, including taxes for any preexisting indebtedness, together with the preexisting area of said district; and such taxes shall be uniform for the whole area and territory in the district as enlarged.

History: En. Sec. 12, Ch. 155, L. 1953; amd. Sec. 12, Ch. 257, L. 1969; R.C.M. 1947, 16-4312(part).

7-34-2156. Withdrawal of land from hospital district. (1) Any portion of a public hospital district may be withdrawn therefrom, as provided in 7-34-2156 through 7-34-2160, upon receipt of a petition signed by 51% or more of the taxpayers residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district.

(2) No petition for withdrawal shall be entertained or acted upon by the board unless the same is filed before December 31 of the preceding year.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2157. Hearing on petition for withdrawal — notice. (1) The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition, which time shall not be more than 4 weeks after the receipt thereof.

(2) Any interested person may appear at said hearing and present objections to the withdrawal of said portion from said district.

(3) The board shall, at least 2 weeks prior to the time so fixed, publish a notice of such hearing in two successive issues of a newspaper published in the county.

History: En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).

7-34-2158. Decision on withdrawal petition — appeal. (1) The board shall consider the petition and all objections thereto, pass upon the merits thereof, and make its order in accordance therewith.

(2) Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the supreme court of Montana.

History: **En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).**

7-34-2159. Effective date of withdrawal. Any withdrawal shall be effective as of January 1 following the issuance of the withdrawal order.

History: **En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).**

7-34-2160. Withdrawing property subject to existing indebtedness. All taxable property within the withdrawn area shall remain subject to taxation for any bonded indebtedness of the hospital district existing as of the effective date of the withdrawal to the same extent as it would have been subject if not withdrawn.

History: **En. Sec. 11, Ch. 155, L. 1953; amd. Sec. 11, Ch. 257, L. 1969; amd. Sec. 24, Ch. 388, L. 1975; R.C.M. 1947, 16-4311(part).**

7-34-2161. Dissolution of hospital district. At any time after 5 years from the date any public hospital district is created, such district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least 51% of the owners of property lying within such district as shown by the last-completed assessment roll.

History: **En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).**

7-34-2162. Hearing on petition for dissolution — notice. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three separate public places within said district for at least 2 weeks prior to the hearing. The notice shall also be published for at least two successive issues in a newspaper published in the county prior to such hearing.

History: **En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).**

7-34-2163. Decision on dissolution petition. The commissioners shall enter upon their minutes an order dissolving such district if, upon the hearing provided for in 7-34-2162, the commissioners find:

(1) such petition to be sufficient;

(2) that the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations; and

(3) that there is good reason for the dissolution of such district.

History: **En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).**

7-34-2164. Effect of dissolution. The order of dissolution shall be filed of record, and the dissolution shall be effective for all purposes 6 months after the date of filing said order of dissolution, provided that at or before such time the board of trustees of said district certifies to the board of county commissioners that all debts and obligations of the district have been paid, discharged, or irrevocably settled, together with legal proof thereof. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged, or irrevocably settled shall become the property of the county.

History: En. Sec. 13, Ch. 155, L. 1953; amd. Sec. 13, Ch. 257, L. 1969; R.C.M. 1947, 16-4313(part).

Part 22

County Hospital Services

7-34-2201. Erection and management of county hospital. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a hospital to be erected, furnished, and maintained.

(2) The board of county commissioners of any county of this state which now has or may hereafter acquire title to a site and building or buildings suitable for county hospital purposes shall have jurisdiction and power, under such limitations and restrictions as are prescribed by law, to furnish and equip such building or buildings for hospital purposes in accordance with and as provided by the provisions of this section.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-34-2202. Hospital commission. The board of county commissioners shall have the power to create a commission for the management of such hospitals, as provided in 7-8-2103.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-34-2203. Provision of care for indigent and nonindigent sick. A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been or which may hereafter be erected and furnished under the provisions of 7-34-2201 may also be used for the hospitalization of the nonindigent sick provided said nonindigent sick pay a reasonable fee for such hospitalization and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-34-2204. Lease of county property for hospital purposes. (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to lease county buildings, equipment, furniture, and fixtures for hospital purposes, with full power of lessor except as hereinafter limited, upon the terms and conditions as the board may decide upon. The rentals received under the lease or leases shall be paid into the general fund of the county.

(2) (a) No lease may be made for a longer period than 5 years except in a case of financing bonds in accordance with 7-34-2411 through 7-34-2418, in which case the lease may terminate at the maturity date of the bonds sold and in which case bond payments may be made from lease receipts.

(b) The board may not enter into a contract of lease without and until first having advertised in a newspaper published in the county at least once a week for 5 weeks that the buildings and equipment are for lease for hospital purposes.

History: En. Subd. 30, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.29, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1977; R.C.M. 1947, 16-1032.

Part 23

County Boarding and Nursing Homes for the Aged

7-34-2301. Construction and operation of county boarding or nursing home authorized. The board of county commissioners may erect, equip, maintain, and operate a boarding home or nursing home for the aged, subject to standards established by the department of health and environmental sciences.

History: En. Sec. 1, Ch. 88, L. 1963; amd. Sec. 106, Ch. 349, L. 1974; R.C.M. 1947, 16-1037.

7-34-2302. Nature of services provided. The county boarding home or nursing home shall provide care, nursing care, maintenance, board, and room for the indigent aged. If facilities permit, the county boarding home or nursing home may provide similar services to nonindigent aged and shall charge and accept such reasonable payment for such care as is determined by the board of county commissioners.

History: En. Sec. 2, Ch. 88, L. 1963; R.C.M. 1947, 16-1038.

7-34-2303. Lease of county property for boarding or nursing home. (1) The board of county commissioners may lease and demise county buildings, equipment, furniture, and fixtures for the purpose of operation of a boarding home or nursing home for aged persons with full power of lessor except as hereinafter limited, upon such terms and conditions as the board shall decide upon.

(2) The rentals received under such lease or leases shall be paid into the poor fund of the county.

(3) No such lease and demise shall be made for a longer period than 5 years.

(4) Such board shall not enter into a contract of lease without and until having advertised in a newspaper published in the county at least once a week for 5 weeks that the said buildings and equipment are for lease for the purpose of a boarding home or nursing home for aged persons.

History: En. Sec. 1, Ch. 87, L. 1963; R.C.M. 1947, 16-1036.

Part 24

Financing of County-Operated Hospitals and Nursing Homes

7-34-2401. Depletion allowance reserve fund authorized. The governing body of any county in Montana may establish a depletion allowance reserve fund for the replacement and acquisition of property and equipment for county-operated hospitals and nursing homes created under 7-8-2102, 7-34-2201, 7-34-2301, and 7-34-2502.

History: En. 16-1042 by Sec. 1, Ch. 365, L. 1975; R.C.M. 1947, 16-1042.

7-34-2402. Sources of money for depletion allowance reserve fund. Money for the depletion allowance reserve fund may be derived from:

(1) public and private grants;

(2) money collected by the hospital or nursing home for which the fund is created, from or for indigent patients, that are in excess of the expenses incurred for the care of such patients.

History: En. 16-1043 by Sec. 2, Ch. 365, L. 1975; R.C.M. 1947, 16-1043(part).

7-34-2403. Accumulation of reserve fund. The depletion allowance reserve fund may accumulate at the discretion of the governing body.

History: En. 16-1043 by Sec. 2, Ch. 365, L. 1975; R.C.M. 1947, 16-1043(2).

7-34-2404. Investment of reserve fund. The money held in the depletion allowance reserve fund may be invested as provided by law. All interest earned on the investments is credited to the depletion allowance reserve fund.

History: En. 16-1044 by Sec. 3, Ch. 365, L. 1975; R.C.M. 1947, 16-1044.

7-34-2405 through 7-34-2410 reserved.

7-34-2411. Hospital and nursing home bonds authorized. (1) Notwithstanding any limitation imposed by law upon the bonded indebtedness of a county, a county constructing a hospital or nursing home under 7-8-2102 or 7-34-2201 may borrow money and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the facility, including revenues derived from:

(a) fees and payments for hospital or nursing home services;

(b) taxes levied under 7-34-2417;

(c) grants or contributions from the federal government; or

(d) any other sources.

(2) For the security of any such bonds, the county may by resolution make and enter into any covenant, agreement, or indenture and exercise any additional powers authorized to be made, entered into, or exercised by a county. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in 7-34-2411 through 7-34-2418 prior to the payment of current costs of operation and maintenance of the facilities.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part).

7-34-2412. Applicability. The authority granted under 7-34-2411 through 7-34-2418 is available only to counties in which no hospital exists or in which the only existing hospital has been ordered closed or cannot be reasonably brought into compliance with the standards established by the department of health and environmental sciences under Title 50, chapter 5, parts 1, 2, and 3.

History: En. 16-1047 by Sec. 3, Ch. 511, L. 1975; amd. Sec. 2, Ch. 513, L. 1977; R.C.M. 1947, 16-1047.

7-34-2413. Limitations on bond authority. The bonds may be issued by resolution or resolutions of the county governing body without any limitation of amount except as follows:

(1) no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then-outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and

(2) the county shall be obligated to take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part).

7-34-2414. Election required on question of issuance of bonds. (1) No bonds may be issued by any county until the question of approval of the issuance of such bonds has been submitted to the registered electors of the county at a general election or a special election called for that purpose by the governing body of the county and the majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by the laws governing the election on county general obligation bonds in chapter 7, part 22.

(2) If a majority of the electors voting thereon vote against the issuance of the bonds, the county shall have no authority to issue the bonds under 7-34-2411 through 7-34-2418.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(2)(c); amd. Sec. 349, Ch. 571, L. 1979; amd. Sec. 47, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "the laws governing the election on county general obligation bonds in chapter 7, part 22" for "[7-7-2229 through 7-7-2231, 7-7-2233, and 7-7-2234]".

Transition: Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-34-2415. *(Temporary)* **Details of bonds.** (1) The bonds may be sold at public or private sale and shall bear interest at a rate or rates not exceeding the limitation of 17-5-102. The bonds may be for a 40-year period.

(2) Except as otherwise provided in 7-34-2411 through 7-34-2418, any bonds issued pursuant to 7-34-2411 through 7-34-2418 by a county shall be payable as to principal and interest solely from revenues of the county and

shall state on their face the applicable limitations or restrictions regarding the source or sources from which such principal and interest are payable.

7-34-2415. *(Revived July 1, 1983)* **Details of bonds.** (1) The bonds may be sold at public or private sale and shall bear interest at a rate or rates not exceeding 10% a year. The bonds may be for a 40-year period.

(2) Except as otherwise provided in 7-34-2411 through 7-34-2418, any bonds issued pursuant to 7-34-2411 through 7-34-2418 by a county shall be payable as to principal and interest solely from revenues of the county and shall state on their face the applicable limitations or restrictions regarding the source or sources from which such principal and interest are payable.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part); amd. Sec. 9, Ch. 500, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "the limitation of 17-5-102" for "10% a year" in (1).

Effective Date — Termination: Section 21, Ch. 500, L. 1981, provided: "This act is effective on passage and approval and terminates on July 1, 1983." Approved April 23, 1981.

7-34-2416. Tax-exempt status of bonds. Bonds issued by a county pursuant to the provisions of 7-34-2411 through 7-34-2418 are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(part).

7-34-2417. Special tax levy authorized. In the event the bonds become delinquent or cannot be paid from ordinary revenues of the facility, a county which has issued bonds under 7-34-2411 may levy taxes on all taxable property within the county in the manner provided for public hospital districts under 7-34-2133, 7-34-2134, 7-34-2135(1), and 7-34-2136, namely, 3 mills not submitted to a vote of the people and 3 additional mills approved by a vote of the people.

History: En. 16-1046 by Sec. 2, Ch. 511, L. 1975; R.C.M. 1947, 16-1046.

7-34-2418. General tax to support bonds authorized. (1) (a) The governing body of any county may, with respect to bonds issued by the county pursuant to 7-34-2411 through 7-34-2418, by resolution covenant that:

(i) in the event that at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county for the payment of such deficiency; and

(ii) at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the county for the payment of such deficiency.

(b) The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies.

(2) Such taxes shall not be subject to any limitation of rate or amount applicable to other county taxes but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency.

(3) In the event more than one county is included in an authority issuing bonds pursuant to 7-34-2411 through 7-34-2418, the counties may apportion

the obligation to levy taxes for the payment of or in anticipation of a deficiency in the revenues appropriated for such bonds in such manner as the counties shall determine.

History: En. 16-1045 by Sec. 1, Ch. 511, L. 1975; amd. Sec. 1, Ch. 513, L. 1977; R.C.M. 1947, 16-1045(4).

Part 25

Multicounty Operation of Hospitals and Nursing Homes

7-34-2501. Definitions. As used in this part, the following definitions shall apply:

(1) "Contract" means the agreement entered into by two or more counties for the purpose of creating a joint institution.

(2) "Joint institution" means a county hospital or nursing home for the aged constructed, purchased, leased, equipped, and operated by two or more counties pursuant to the terms of the contract creating it.

History: En. Sec. 1, Ch. 100, L. 1965; R.C.M. 1947, 16-1039.

7-34-2502. Joint institutions authorized. Two or more counties may by contract create a joint institution which will be operated and financed by the contracting counties.

History: En. Sec. 2, Ch. 100, L. 1965; R.C.M. 1947, 16-1040.

7-34-2503. Contract for joint institution. The contract creating the joint institution shall provide:

(1) the total proposed expenditure for the construction, purchase, or lease of the joint institution and the proposed cost of equipping and operating the joint institution;

(2) for the management of the joint institution by a method which will provide that each contracting county shall be represented and have an active part in the management of the joint institution;

(3) that the management of the joint institution shall have such powers as will be necessary to accomplish the purpose of this part.

History: En. Sec. 3, Ch. 100, L. 1965; R.C.M. 1947, 16-1041(part).

7-34-2504. Division of costs among counties. The total cost of the joint institution shall be divided between the contracting counties in such manner as they shall determine.

History: En. Sec. 3, Ch. 100, L. 1965; R.C.M. 1947, 16-1041(part).

Parts 26 through 40 reserved

Part 41

Municipal Hospital Services

7-34-4101. Detention hospitals. In case of necessity, the city or town council has power to establish, at a suitable place within or without the limits of the city or town, a hospital to prevent the spread of smallpox or other contagious or infectious diseases, to regulate the control thereof, to do all other acts which may be necessary for the promotion of health, and to prevent the spread of infectious or contagious diseases within the city or town.

History: **En. Subd. 45, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.44, R.C.M. 1935; R.C.M. 1947, 11-947.**

CHAPTER 35

CEMETERY SERVICES

Part 1 — General Provisions Applicable to Local Governments

Section

7-35-101. Joint conduct of cemeteries.
7-35-102. Use of county lands for cemeteries.

Parts 2 through 20 reserved

Part 21 — Cemetery Districts

7-35-2101. Petition to create cemetery district.
7-35-2102. Notice of hearing on creation of district.
7-35-2103. Hearing on creation of district.
7-35-2104. Establishment of boundaries and call for election.
7-35-2105. Territory of cemetery district.
7-35-2106. Election details.
7-35-2107. Organization of district upon favorable vote.
7-35-2108. Government of district by trustees.
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7-35-2110. Rules.
7-35-2111. Petition for withdrawal of land — hearing.
7-35-2112. Notice of hearing on withdrawal.
7-35-2113. Hearing on withdrawal.
7-35-2114. Petition for alteration of district boundaries.
7-35-2115. Notice and hearing on alteration of boundaries.
7-35-2116. Treatment of annexed lands.
Sections 7-35-2117 through 7-35-2120 reserved.
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7-35-2131. Establishment and maintenance of permanent care and improvement fund.
7-35-2132. Application for appointment of trustees of fund.
7-35-2133. Appointment of trustees of fund.
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7-35-2142. Effect of failure of district to make application for trustees or of disability of all members of board of trustees of fund.
7-35-2143. Recording of instruments of appointment of trustees of fund.
7-35-2144. Vesting of funds in trustees.
7-35-2145. Vesting of powers and duties in new trustees.
7-35-2146. Administration of permanent care and improvement fund.
7-35-2147. Financial management of fund.
7-35-2148. Disposition of fund income.
7-35-2149. Notice to purchasers of cemetery lots of transfers to fund.
7-35-2150. Annual report — availability.

Part 22 — Cemeteries in Counties

7-35-2201. Power of county commissioners to conduct cemeteries.
7-35-2202. Restrictions on burial not to be affected.

Parts 23 through 40 reserved

Part 41 — Cemeteries in Municipalities

7-35-4101. Power of municipalities to establish and maintain cemeteries.
7-35-4102. Vesting of title to cemetery grounds — restrictions on use.
7-35-4103. What constitutes a cemetery.
7-35-4104. Cemeteries on public lands.
7-35-4105. Layout of cemeteries.
7-35-4106. Inhabitants of municipality to own cemetery.
7-35-4107. Jurisdiction and control of cemeteries.
7-35-4108. Powers of authorities having jurisdiction and control of cemeteries.
7-35-4109. Register must be kept.

Part 1

General Provisions Applicable to Local Governments

7-35-101. Joint conduct of cemeteries. The board of county commissioners of any county within Montana is hereby given jurisdiction and power to establish and conduct cemeteries jointly with any incorporated city or town in such county and jointly with any incorporated city or town, to acquire and conduct cemeteries already established or conducted by any person, firm, or corporation, including municipal corporations.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).

7-35-102. Use of county lands for cemeteries. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a cemetery.

(2) The conveyance is subject to the provisions of 7-8-102.

History: En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).

Parts 2 through 20 reserved

Part 21

Cemetery Districts

7-35-2101. Petition to create cemetery district. (1) Whenever a petition is presented to the board of county commissioners of the county in which a proposed district is situated, the board shall by resolution fix a time for the hearing of the petition at a regular or special meeting of said board. The petition shall:

(a) be signed by not less than 20% of the citizens who are owners of land located within a proposed cemetery district and whose names appear as such owners of land upon the last-completed assessment roll of the county in which said proposed district is situated; and

(b) definitely describe the boundaries of the proposed district and request that the territory within said boundaries be organized into a public cemetery district.

(2) The time for the hearing may not be less than 2 or more than 5 weeks from the time of presentation of the petition.

History: En. Sec. 2, Ch. 221, L. 1943; amd. Sec. 2, Ch. 16, L. 1945; R.C.M. 1947, 9-202(part).

7-35-2102. Notice of hearing on creation of district. (1) The board of county commissioners shall cause notice to be given of the time and place of said hearing by publication as prescribed by law for not less than 2 weeks prior to the time of said hearing.

(2) Said notice shall state that any person residing in or owning property within said proposed district or within any existing cemetery district, any part of the territory of which is described in said petition, may appear before said board at the hearing and show cause why the district should not be created or the proposed boundaries changed.

History: En. Sec. 2, Ch. 221, L. 1943; amd. Sec. 2, Ch. 16, L. 1945; R.C.M. 1947, 9-202(part).

7-35-2103. Hearing on creation of district. At the time fixed for said hearing, the board shall determine whether or not it complies with the requirements hereinbefore set forth and whether or not the notice required herein has been published as required and must hear all competent and relevant testimony offered in support of or in opposition thereto. Said hearing may be adjourned from time to time for the determination of said facts, not to exceed 2 weeks in all.

History: En. Sec. 3, Ch. 221, L. 1943; amd. Sec. 3, Ch. 16, L. 1945; R.C.M. 1947, 9-203.

7-35-2104. Establishment of boundaries and call for election. If the board of county commissioners shall determine that the petitioners have complied with the requirements herein set forth and that the required notice has been published, it shall proceed to a final hearing of the matter. Said board shall make such changes in the boundaries of the proposed district as it may deem advisable and shall define and establish such boundaries as described in the petition and shall call an election.

History: En. Sec. 4, Ch. 221, L. 1943; amd. Sec. 4, Ch. 16, L. 1945; R.C.M. 1947, 9-204.

7-35-2105. Territory of cemetery district. A cemetery district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 221, L. 1943; amd. Sec. 1, Ch. 16, L. 1945; R.C.M. 1947, 9-201(part).

7-35-2106. Election details. (1) In its order the board must designate whether a special election shall be held or whether the matter shall be determined at the next general election. If a special election is ordered, the board must in its order specify the time.

(2) The election shall be held in all respects, as nearly as practicable, in conformity with the general election laws.

(3) At such election, the ballots must contain the words "Cemetery district — Yes" and "Cemetery district — No".

History: En. Sec. 5, Ch. 221, L. 1943; amd. Sec. 5, Ch. 16, L. 1945; R.C.M. 1947, 9-205; amd. Sec. 350, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-104.

7-35-2107. Organization of district upon favorable vote. In the event that a majority of the votes cast are in favor of the formation of said cemetery district, the board of county commissioners shall proceed with the organization thereof as specified in this part.

History: En. Sec. 6, Ch. 221, L. 1943; amd. Sec. 6, Ch. 16, L. 1945; R.C.M. 1947, 9-206.

7-35-2108. Government of district by trustees. (1) The cemetery district shall be governed and managed by three trustees appointed by the board of county commissioners. The trustees at their first meeting shall adopt bylaws for the government and management of the district.

(2) The trustees may be appointed from the residents of the district for terms of 1, 2, and 3 years, respectively, and until their successors are appointed and qualified. Annually thereafter the board of county commissioners shall appoint one trustee for a term of 3 years or until his successor is appointed and qualified.

(3) Per diem and mileage of the cemetery trustees may be set by resolution of the board of county commissioners.

History: En. Sec. 7, Ch. 221, L. 1943; amd. Sec. 7, Ch. 16, L. 1945; amd. Sec. 1, Ch. 7, L. 1975; R.C.M. 1947, 9-207; amd. Sec. 3, Ch. 213, L. 1979.

7-35-2109. Powers of district. Said district may:

(1) maintain a cemetery or cemeteries within said district;

(2) hold title to property by grant, gift, devise, lease, or any other method; and

(3) perform all acts necessary or proper for the carrying out of the purposes of 7-35-2101 through 7-35-2125, including the selling or leasing of burial lots.

History: En. Sec. 8, Ch. 221, L. 1943; amd. Sec. 8, Ch. 16, L. 1945; R.C.M. 1947, 9-208.

7-35-2110. Rules. The trustees shall make proper rules for the management of the cemeteries.

History: En. Sec. 10, Ch. 221, L. 1943; amd. Sec. 10, Ch. 16, L. 1945; R.C.M. 1947, 9-210(part).

7-35-2111. Petition for withdrawal of land — hearing. (1) Any portion of a public cemetery district may be withdrawn therefrom as provided in this section, and 7-35-2112 on the grounds that such portion will not be benefited by remaining in said district, upon receipt of a petition signed by:

(a) 50 or more freeholders residing in or owning property within the portion desired to be withdrawn by any public cemetery district; or

(b) a majority of such freeholders if there are less than 100 residing within the portion sought to be withdrawn.

(2) The board of county commissioners shall fix a time for the hearing of such withdrawal petition, which shall not be more than 60 days after the receipt thereof.

History: En. Sec. 11, Ch. 221, L. 1943; amd. Sec. 11, Ch. 16, L. 1945; R.C.M. 1947, 9-211(part).

7-35-2112. Notice of hearing on withdrawal. The board shall, at least 30 days prior to the time so fixed, publish a notice of such hearing for two issues as provided by law.

History: En. Sec. 11, Ch. 221, L. 1943; amd. Sec. 11, Ch. 16, L. 1945; R.C.M. 1947, 9-211(part).

7-35-2113. Hearing on withdrawal. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider all objections, pass upon the merits thereof, and make an order in accordance therewith. This order is subject to review by any court of competent jurisdiction.

History: En. Sec. 12, Ch. 221, L. 1943; amd. Sec. 12, Ch. 16, L. 1945; R.C.M. 1947, 9-212.

7-35-2114. Petition for alteration of district boundaries. The boundaries of any such public cemetery district may be altered and outlying districts may be annexed thereto in the following manner: a petition shall be presented to the board of county commissioners of the county in which said public cemetery district is situated, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public cemetery district and signed by:

(1) 50 or more freeholders within the territory proposed to be annexed; or

(2) a majority of such freeholders if there are less than 100 residing within the portion proposed to be annexed.

History: En. Sec. 13, Ch. 221, L. 1943; amd. Sec. 13, Ch. 16, L. 1945; R.C.M. 1947, 9-213.

7-35-2115. Notice and hearing on alteration of boundaries. (1) At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published according to law for 2 weeks prior to the date to be fixed by said board for the hearing of said petition.

(2) Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any property in said district.

(3) Said board shall have the power, by order entered on its minutes, to grant said petition either in whole or in part and to alter the boundaries of

said public cemetery district and to annex thereto all or such portion of said territory described in said petition as will be benefited thereby.

History: **En. Secs. 14, 15, Ch. 221, L. 1943; amd. Secs. 14, 15, Ch. 16, L. 1945; R.C.M. 1947, 9-214, 9-215(part).**

7-35-2116. Treatment of annexed lands. The annexed territory shall become and be a part of such public cemetery district and shall be taxed, together with the remainder of said district, for all taxes to be thereafter levied by said board of county commissioners for the operation and maintenance of said public cemetery district.

History: **En. Sec. 15, Ch. 221, L. 1943; amd. Sec. 15, Ch. 16, L. 1945; R.C.M. 1947, 9-215(part).**

7-35-2117 through 7-35-2120 reserved.

7-35-2121. District budget. (1) The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law.

(2) Insofar as the same can be made applicable, the county budget system, part 23 of chapter 6, shall govern the operation of cemetery districts created under this part.

History: **En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part).**

7-35-2122. County tax levy. The board of county commissioners must, annually at the time of levying county taxes, fix and levy upon all property within the cemetery district an amount sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of the district. The tax may not exceed 4 mills on each dollar of taxable valuation on the property of the district.

History: **En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part); amd. Sec. 13, Ch. 263, L. 1979.**

7-35-2123. Disbursement of tax proceeds. The proceeds of taxes collected by the county treasurer for the public cemetery fund shall be disbursed to the various cemetery districts upon the submission of a claim by said cemetery districts to the board of county commissioners for their pro rata share of the proceeds of the taxes collected. Upon approval of said claim by the board of county commissioners, the county clerk shall issue a trust fund warrant drawn upon the public cemetery fund and payable to each claimant.

History: **En. Sec. 1, Ch. 94, L. 1951; R.C.M. 1947, 9-209.1.**

7-35-2124. Compliance with state laws. The procedure of the collecting of the tax and the distribution of the funds shall be in accordance with the existing laws of the state of Montana.

History: **En. Sec. 10, Ch. 221, L. 1943; amd. Sec. 10, Ch. 16, L. 1945; R.C.M. 1947, 9-210(part).**

7-35-2125. Excess expenditures. Expenditures made, liabilities incurred, or warrants issued by or in behalf of any cemetery district in excess of the annual budget presented to the board of county commissioners as provided in this part and the amount appropriated for and authorized to be expended for each item in the budget shall not be a liability of the cemetery district.

History: **En. Sec. 9, Ch. 221, L. 1943; amd. Sec. 9, Ch. 16, L. 1945; amd. Sec. 1, Ch. 93, L. 1951; amd. Sec. 1, Ch. 4, L. 1955; amd. Sec. 1, Ch. 74, L. 1977; R.C.M. 1947, 9-209(part).**

7-35-2126 through 7-35-2130 reserved.

7-35-2131. Establishment and maintenance of permanent care and improvement fund. Any public cemetery district formed under the provisions of this part which shall have established and be maintaining a cemetery shall provide, in the manner set forth in 7-35-2131 through 7-35-2150, for the establishment and maintenance of a permanent fund, the income of which shall be devoted to the care, maintenance, and improvement of such cemetery. This fund shall be known as the permanent care and improvement fund of such public cemetery district.

History: **En. Sec. 1, Ch. 165, L. 1955; R.C.M. 1947, 9-216.**

7-35-2132. Application for appointment of trustees of fund. Whenever money to the amount of $100 shall have been received by such public cemetery district heretofore or hereafter formed, either from the sale of lots or from direct payments of such public cemetery district toward such a fund by lot owners, the trustees of such public cemetery district shall immediately make application to the judge of the district court of the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund.

History: **En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part).**

7-35-2133. Appointment of trustees of fund. (1) The district judge shall, upon receipt of the application, appoint a trustee or a board of trustees to administer the fund from a list submitted to him by the trustees of the public cemetery district.

(2) The number of trustees for the fund may not exceed five, with the exact number to be set at the discretion of the trustees of the public cemetery district. Each trustee for the fund must be a resident of the state during the time he exercises the powers of such trust.

(3) Whenever a person, so chosen and appointed, fails to qualify within 30 days after his appointment, a vacancy exists, and the judge of the district court shall appoint from a list submitted to him by the trustees of the public cemetery district some person possessing the above qualifications to fill the vacancy in the board of trustees of the fund. Trustees of the fund appointed by the public cemetery district or district court prior to July 1, 1955, continue to hold office as trustees until terminated as provided in 7-35-2131 through 7-35-2150.

History: **En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part); amd. Sec. 4, Ch. 213, L. 1979.**

7-35-2134. Use of bank as trustee. The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law to be trustee of such trust fund. In that event the district court shall make appointment of such nominee which shall serve in such capacity without bond but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part).

7-35-2135. Term of office for trustees of fund. The tenure of office of the trustee or trustees of such fund shall be for the term of 3 years unless they permanently remove from the state of Montana or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as provided in 7-35-2131 through 7-35-2150.

History: En. Sec. 3, Ch. 165, L. 1955; R.C.M. 1947, 9-218.

7-35-2136. Vacancies. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund, the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 5, Ch. 165, L. 1955; R.C.M. 1947, 9-220.

7-35-2137. Compensation of trustees of fund. (1) The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the public cemetery district on the other provided that the total compensation of such trustee or of the entire board of trustees shall in no case exceed the sum of $100 per annum.

(2) The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the public cemetery district until such trust fund shall reach $10,000, and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 13, Ch. 165, L. 1955; R.C.M. 1947, 9-228.

7-35-2138. Secretary for trustees of fund. The secretary of the public cemetery district shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: En. Sec. 14, Ch. 165, L. 1955; R.C.M. 1947, 9-229.

7-35-2139. Bond requirements for trustees of fund. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the public cemetery district for which the trust is maintained a bond in a sum equaling at least 1 ⅓ times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July 1 of the next even-numbered year after the year in which such bond shall be given and until such trustee shall give a new bond as hereinafter provided.

(2) On July 1 in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided.

(3) Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists or some part thereof shall be situated and shall be filed with the clerk of the district court of the county in which such cemetery is located.

History: En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part).

7-35-2140. Effect of failure to renew bond. Any failure to renew bonds within 30 days after the time hereinbefore provided shall be a sufficient ground for the removal of any trustee within the discretion of the district court.

History: En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part).

7-35-2141. Reduction of bond by deposit of money and securities. (1) For the purpose of fixing the amount of the bond, the value of the property on hand may be reduced in an amount equal to the value of the money, bonds, and securities which the trustee or trustees of the permanent care and improvement fund may elect to and do deposit with the county treasurer as hereinafter provided.

(2) The trustee or trustees of such fund may deposit for safekeeping such money, bonds, and securities as he or they see fit with the county treasurer of the county in which said cemetery or some part thereof is situated. It is the duty of the county treasurer to receive and safely keep all such money, bonds, and securities or any part thereof and pay them out or deliver them up upon the order of such trustee or a majority of the trustees, when countersigned by a judge of said judicial district and not otherwise, and to keep an account with such trustee or trustees of all such transactions. For the safekeeping and payment and delivery of all such money, bonds, and securities as herein provided, the treasurer and his sureties are liable upon his official bond.

History: En. Sec. 4, Ch. 165, L. 1955; R.C.M. 1947, 9-219(part).

7-35-2142. Effect of failure of district to make application for trustees or of disability of all members of board of trustees of fund. (1) In the case of the failure of the trustees of such public cemetery district to make application to the judge of said district court for the appointment of a board of trustees of such fund as provided in 7-35-2132 or in the case of the death, removal, resignation, or disability of all the members of such board, the said rights, titles, interests, authorities, powers, franchises, and trusts of such fund shall vest in the district court of the county in which such cemetery or the greater part thereof shall be situated until the appointment and qualification of a new board of trustees. In such cases, such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order.

(2) The trustee or trustees appointed by the judge of said court under the provisions of this section shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under 7-35-2131 through 7-35-2150. Such trustee or such board of trustees must annually, or more often if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated a duly verified account showing a detailed statement of all money collected and of all

securities on hand, together with all money disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time.

(3) Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the public cemetery district, and any trustee of the said trust fund shall have the right to make any application to the court provided for in 7-35-2131 through 7-35-2150.

History: **En. Sec. 7, Ch. 165, L. 1955; R.C.M. 1947, 9-222.**

7-35-2143. Recording of instruments of appointment of trustees of fund. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the public cemetery district establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such public cemetery district is located.

History: **En. Sec. 8, Ch. 165, L. 1955; R.C.M. 1947, 9-223.**

7-35-2144. Vesting of funds in trustees. Upon the election, appointment, and qualification, as provided in this part, of the trustees of such fund, all of the title to the funds included in said trust and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining shall at once vest in him or them. In case of the failure of any of those so chosen and appointed to qualify within 30 days after their appointment, then the same shall vest in the one or more who shall qualify.

History: **En. Sec. 2, Ch. 165, L. 1955; R.C.M. 1947, 9-217(part).**

7-35-2145. Vesting of powers and duties in new trustees. In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever existing in such trustee at the time of such death, resignation, disability, or removal shall at once, without further act or conveyance, vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted. All newly appointed trustees shall at once, upon qualification, succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board; and the same shall always be vested in the members of such board as actually constituted.

History: **En. Sec. 6, Ch. 165, L. 1955; R.C.M. 1947, 9-221.**

7-35-2146. Administration of permanent care and improvement fund. (1) From and after March 4, 1955, the trustees of such cemetery district as are mentioned in 7-35-2132 shall provide, by resolution spread upon the minutes of such public cemetery district, for the transfer to the trustees of such permanent care and improvement fund of not less than 15% or more than 40% of the money received from the sale of cemetery lots designated as perpetual care lots by said public cemetery district, together with all money theretofore or thereafter received from the owners of lots for the care of such lots. Such transfer of any such funds then on hand shall then and there be made. Such transfers shall be made thereafter quarterly, upon the first day of January, April, July, and October of each year, to the trustees of such fund.

(2) If at any time there shall remain in the hands of such public cemetery district unexpended money over and above the liabilities of the public cemetery district, the board of trustees of such public cemetery district may by a two-thirds vote appropriate the whole or any portion of such unexpended money to such permanent care and improvement fund, provided that such fund (exclusive of such portion thereof as may have been paid in by owners of lots for the care of such lots) shall never in any case be allowed to exceed the sum of $5,000 per acre of the cemetery to be cared for therewith, and when such fund shall reach such amount, all appropriations and payments thereto shall cease.

History: **En. Sec. 9, Ch. 165, L. 1955; R.C.M. 1947, 9-224.**

7-35-2147. Financial management of fund. (1) The principal of such fund shall in all cases remain intact and inviolate.

(2) The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in Montana and not otherwise, provided that each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the public cemetery district.

(3) The trustees of such fund shall, on January 1 and July 1 in each year, turn over to the treasurer of such public cemetery district all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: **(1), (3)En. Sec. 10, Ch. 165, L. 1955; Sec. 9-225, R.C.M. 1947; (2)En. Sec. 12, Ch. 165, L. 1955; amd. Sec. 6, Ch. 98, L. 1974; Sec. 9-227, R.C.M. 1947; R.C.M. 1947, 9-225, 9-227.**

7-35-2148. Disposition of fund income. (1) The income of that portion of such fund received from the sale of lots designated as perpetual care lots shall be used, in the discretion of the trustees of such public cemetery district, solely for the care, maintenance, and improvement of such cemetery lots and its grounds, roads, walks, and avenues leading thereto, except as herein provided. The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively.

(2) In the event of any portion of the income so paid ever remaining unexpended for such purposes for 1 year after its being so paid over to the treasurer of such public cemetery district, it shall be returned to the trustees of such fund by said treasurer and become a part of the principal.

History: **En. Sec. 11, Ch. 165, L. 1955; R.C.M. 1947, 9-226(part).**

7-35-2149. Notice to purchasers of cemetery lots of transfers to fund. After July 1, 1955, all public cemetery districts shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor to be transferred under the provisions of 7-35-2131 through 7-35-2150 to the permanent care and improvement fund of such public cemetery district and also such further sum, if there be any, paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed to be transferred as hereinbefore provided.

History: **En. Sec. 11, Ch. 165, L. 1955; R.C.M. 1947, 9-226(part).**

7-35-2150. Annual report — availability. The trustee or the board of trustees of such fund shall annually on January 1 make its report of the condition of such trust fund to the trustees of the public cemetery district as hereinbefore provided. Such reports shall always be kept by the secretary of such public cemetery district and by the clerk of the district court and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 15, Ch. 165, L. 1955; R.C.M. 1947, 9-230.

Part 22

Cemeteries in Counties

7-35-2201. Power of county commissioners to conduct cemeteries. The board of county commissioners of any county within Montana is hereby given jurisdiction and power to:

(1) establish and conduct cemeteries;

(2) acquire lands for said purpose by purchase, condemnation, gift, or devise; and

(3) acquire by purchase, condemnation, gift, or devise cemeteries already established and conducted by persons, firms, or corporations, including municipal corporations.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).

7-35-2202. Restrictions on burial not to be affected. Nothing contained in 7-35-101 or 7-35-2201 will permit the interment of bodies of deceased persons in any such cemetery condemned and taken over under authority of 7-35-2201 as are debarred from burial therein under the articles of incorporation or bylaws of such cemetery association or corporation.

History: En. Sec. 1, Ch. 39, L. 1919; re-en. Sec. 4514, R.C.M. 1921; re-en. Sec. 4514, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1974; R.C.M. 1947, 9-401(part).

Parts 23 through 40 reserved

Part 41

Cemeteries in Municipalities

7-35-4101. Power of municipalities to establish and maintain cemeteries. The city or town council has power to establish and regulate cemeteries within or without the city or town and acquire lands for this purpose and to prohibit the establishment of cemeteries within 3 miles of the city or town.

History: En. Subd. 46, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.45, R.C.M. 1935; R.C.M. 1947, 11-948.

7-35-4102. Vesting of title to cemetery grounds — restrictions on use. The title to lands used as a public cemetery or graveyard, situated in or near to any city, town, or village and used by the inhabitants thereof as a burial-ground continuously without interruption for 5 years, is vested in the inhabitants of such city, town, or village. The lands must not be used for any other purpose than a public cemetery, except that the bodies interred therein may be removed and no other interred therein upon the order of the board of county commissioners, city council, or other body having authority when it appears that the public health is endangered or for any other good cause, but a new cemetery must be purchased and laid out by proper authority and such bodies removed and interred therein, and the old cemetery may be sold and the proceeds applied to the purchase of the new cemetery.

History: En. Sec. 2880, Pol. C. 1895; re-en. Sec. 1988, Rev. C. 1907; re-en. Sec. 5168, R.C.M. 1921; Cal. Pol. C. Sec. 3105; re-en. Sec. 5168, R.C.M. 1935; R.C.M. 1947, 9-301.

7-35-4103. What constitutes a cemetery. Six or more human bodies buried at one place constitutes the place a cemetery.

History: En. Sec. 2881, Pol. C. 1895; re-en. Sec. 1989, Rev. C. 1907; re-en. Sec. 5169, R.C.M. 1921; Cal. Pol. C. Sec. 3106; re-en. Sec. 5169, R.C.M. 1935; R.C.M. 1947, 9-302.

7-35-4104. Cemeteries on public lands. Incorporated cities or towns and, for unincorporated towns or villages, the board of county commissioners of the county may survey, lay out, and dedicate a portion of the public lands situated in or near the city, town, or village, not exceeding 5 acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order constituting the land as a cemetery, must be recorded in the office of the county clerk of the county in which the land is located.

History: En. Sec. 2882, Pol. C. 1895; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 5170, R.C.M. 1921; Cal. Pol. C. Sec. 3107; re-en. Sec. 5170, R.C.M. 1935; R.C.M. 1947, 9-303; amd. Sec. 14, Ch. 263, L. 1979.

7-35-4105. Layout of cemeteries. The public cemeteries of cities, towns, villages, or neighborhoods must be enclosed and laid off into lots.

History: En. Sec. 2884, Pol. C. 1895; re-en. Sec. 1992, Rev. C. 1907; re-en. Sec. 5172, R.C.M. 1921; Cal. Pol. C. Sec. 3109; re-en. Sec. 5172, R.C.M. 1935; R.C.M. 1947, 9-305(part).

7-35-4106. Inhabitants of municipality to own cemetery. The inhabitants of any city, town, village, or neighborhood may, by subscription or otherwise, purchase or receive by gift or donation lands not exceeding 160 acres to be used as a cemetery, the title thereof to be vested in such inhabitants, and when once dedicated for use for burial purposes, the lands must thereafter be used for no other purpose except as provided in 7-35-4102.

History: En. Sec. 2883, Pol. C. 1895; re-en. Sec. 1991, Rev. C. 1907; re-en. Sec. 5171, R.C.M. 1921; Cal. Pol. C. Sec. 3108; re-en. Sec. 5171, R.C.M. 1935; R.C.M. 1947, 9-304.

7-35-4107. Jurisdiction and control of cemeteries. The general management, conduct, and regulation of interments, permits to inter or remove interred bodies, and the disposition of lots, keeping the same in order, are under the jurisdiction and control of:

(1) the cities and towns owning the same if incorporated; or

(2) the board of county commissioners of the county in which they are situated, if not incorporated.

History: En. Sec. 2884, Pol. C. 1895; re-en. Sec. 1992, Rev. C. 1907; re-en. Sec. 5172, R.C.M. 1921; Cal. Pol. C. Sec. 3109; re-en. Sec. 5172, R.C.M. 1935; R.C.M. 1947, 9-305(part).

7-35-4108. Powers of authorities having jurisdiction and control of cemeteries. The board of county commissioners, city trustees, or other corresponding authorities having jurisdiction and control of cemeteries may make general rules therefor and appoint sextons and other officers to enforce obedience to the same, with such other powers and duties regarding the cemetery as they may deem necessary, including the right to raise money by taxation, purchase land, and lay out cemeteries, and manage them.

History: En. Sec. 2885, Pol. C. 1895; re-en. Sec. 1993, Rev. C. 1907; re-en. Sec. 5173, R.C.M. 1921; re-en. Sec. 5173, R.C.M. 1935; R.C.M. 1947, 9-306.

7-35-4109. Register must be kept. The authority having the control of a public or private cemetery must require a register of name, age, birthplace, and date of death and burial of every body interred therein, to be kept by the sexton or other officer, open to public inspection.

History: En. Sec. 2886, Pol. C. 1895; re-en. Sec. 1994, Rev. C. 1907; re-en. Sec. 5174, R.C.M. 1921; re-en. Sec. 5175, R.C.M. 1935; R.C.M. 1947, 9-307.

TITLES 8 AND 9

RESERVED

DOES NOT
CIRCULATE